

## The complaint

Mr B and Mrs B complain Admiral Insurance (Gibraltar) Limited (Admiral) have declined the claim they made under their home insurance policy and have avoided their policy.

Mr B and Mrs B are being represented in this complaint, however as Mrs B has been leading on this complaint and for ease, I've referred to her throughout.

## What happened

In May 2024 Mrs B submitted a home insurance claim to Admiral following a leak at her property. Following investigation into Mrs B's claim, Admiral became aware of two previous incidents it said it hadn't been made aware of. On 16 July 2024 it wrote to Mrs B to ask why these two previous incidents hadn't been declared to it. Following a discussion with Mrs B, Admiral wrote to her on 18 July 2024 to say had it been made aware of the two incidents, it wouldn't have offered Mrs B a policy. It said it would be avoiding her policy, declining to deal with her claim and refunding her policy premiums. Mrs B raised a complaint about Admiral's decision.

On 27 August 2024 Admiral issued a final response to Mrs B's complaint. It said two incidents hadn't been declared to it and so it wouldn't be upholding her complaint. On 14 November 2024 it provided a further response to Mrs B maintaining its decision to avoid Mrs B's policy. Mrs B didn't think this was reasonable and so referred her complaint to this Service.

I told both parties I wasn't intending to uphold Mrs B's complaint. I explained that the relevant law was the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). I said I was satisfied Mrs B had failed to take reasonable care when she failed to declare two incidents from 2019 to Admiral when she purchased her insurance policy. I was satisfied Admiral had been able to demonstrate it wouldn't have offered Mrs B a policy had it been made aware of these two incidents and so it was reasonable to avoid Mrs B's policy, decline to deal with any claims and refund her policy premiums in accordance with CIDRA.

Mrs B didn't agree. She provided a detailed response but in summary:

- The two incidents recorded in 2019 were enquiry calls asking how much her excess was, and so she was unaware they had been recorded as incidents.
- She didn't remember the two incidents from 2019 when she purchased her insurance policy with Admiral and so was unable to declare them.
- Admiral weren't entitled to avoid the policy as the two incidents not declared are identical in nature to the claims she had declared.
- The two incidents from 2019 would have been on the Claims Underwriting Database (CUE) at the time she purchased her policy and so Admiral should have checked this before offering the policy.

- Her previous insurer hadn't mentioned the incidents from 2019 whilst she was insured with it.
- Admiral hadn't avoided her policy but had let it run until the expiry date.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I want to acknowledge I've summarised Mrs B's complaint in less detail than she's presented it. I've not commented on every point she has raised. Instead I've focussed on what I consider to be the key points I need to think about. I mean no discourtesy by this, but it simply reflects the informal nature of this Service. I assure Mrs B and Admiral I've read and considered everything that's been provided.

The relevant law in this case is CIDRA. This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is – what CIDRA describes as – a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Admiral think Mrs B failed to take reasonable care when she failed to tell it about two previous incidents from 2019.

I've listened to the call Mrs B had with Admiral in March 2023 when she was looking to purchase a policy. During this call the handler states:

*'You or anyone living in the property have not made any home insurance claims or suffered any losses or incidents in the last five years'.*

Mrs B said she had spoken to her previous insurer and gone through her previous claims. She said she understood even if she hadn't made a claim, and nothing had been paid out, she would still need to declare this. The handler confirmed that even if no claim had been made, and it was reported as incident only, it would still need to be declared.

Mrs B declared a total of four claims or incidents to Admiral. These were three escape of water claims/incidents from 26 January 2023, 1 November 2022 and 1 April 2022 respectively. She also reported a storm incident from 1 July 2021.

She was then sent a document called a 'Home Proposal Confirmation' which listed the four claims/incidents Mrs B had declared. This document required Mrs B to check the document carefully and to make Admiral aware if any of the information was incorrect.

Admiral have provided evidence from CUE to show Mrs B had two incidents from 2019. One related to an escape of water on 26 September 2019 and the other related to a storm on 30 September 2019. Neither of these incidents were declared to Admiral.

I think the question Mrs B was asked was clear, and that Admiral wanted to know about any previous claims, losses or incidents from the last five years. It was also clarified with Mrs B that even if it was reported as incident only, it would still need to be declared. I've considered whether Mrs B failed to take reasonable care when she failed to declare the two incidents from 2019. The standard of care required is that of a reasonable consumer.

Mrs B has said she didn't remember these two incidents when she purchased her insurance policy. However I don't think not remembering the incidents means Mrs B has taken reasonable care. I think a reasonable consumer in these circumstances would have ensured they had details of previous claims, incidents and losses so it could declare this accurately.

Mrs B has also said she was unaware the two incidents had been recorded by her previous insurer as she had just called to query her excess. However she was required to make Admiral aware of any losses she had incurred, and given she contacted her insurance company following the losses in question, I think a reasonable consumer would have declared the two incidents from 2019.

Mrs B has said her previous insurer didn't mention the two incidents from 2019 whilst she was insured with them. Whilst this may have been the case, I think Admiral were clear it needed any claims, incidents or losses from the last five years to be declared to it.

Mrs B has said the two incidents from 2019 were available on CUE and so Admiral should have checked CUE before allowing her to purchase the insurance policy. There's no requirement for Admiral to check CUE before providing an insurance policy to ensure the answers given are correct. The onus is on the consumer to take reasonable care not to make a misrepresentation when answering the insurer's questions, and it isn't unreasonable for an insurer to rely on the information it is given when offering an insurance policy.

Based on the available evidence I think a reasonable consumer would have declared the two incidents from 2019, and so I'm satisfied Mrs B failed to take reasonable care when she failed to declare this.

I've gone onto consider whether this misrepresentation is a qualifying misrepresentation.

Admiral have provided underwriting evidence to show had it been made aware of the two incidents from 2019, alongside the four claims/incidents it had been made aware of, it wouldn't have offered Mrs B a policy. As Admiral have been able to show it wouldn't have offered Mrs B a policy had the two incidents from 2019 been declared to it, I'm satisfied this is a qualifying misrepresentation.

Admiral have treated Mrs B's misrepresentation as a careless one rather than deliberate or reckless. I think this is reasonable and so I've looked at the actions Admiral can take in accordance with CIDRA.

As Admiral have shown it wouldn't have offered a policy at all, I'm satisfied it was entitled to avoid Mrs B's policy in accordance with CIDRA. And as this means – in effect – her policy never existed, Admiral doesn't have to deal with her claim. As it has deemed the misrepresentation as careless, it should return any premiums Mrs B has paid towards the policy. Mrs B has said the policy wasn't avoided by Admiral, however Admiral have confirmed the policy was avoided and premiums were refunded to Mrs B. As CIDRA reflects this Services' long standing approach to misrepresentation cases, I think allowing Admiral to rely on it to avoid Mrs B's policy produces a fair and reasonable outcome in this complaint.

I naturally empathise with Mrs B given the damage to her property. However for the reasons I've explained, I won't be requiring Admiral to take any further action in relation to Mrs B's

complaint.

### **My final decision**

For the reasons I've outlined above I don't uphold Mr B and Mrs B's complaint about Admiral Insurance (Gibraltar) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 9 April 2025.

Andrew Clarke  
**Ombudsman**