

## The complaint

Mr B is complaining HCC International Insurance Company Plc has avoided his buildings insurance policy and in turn declined a claim he made.

## What happened

In April 2024 Mr B contacted a broker to arrange a buildings insurance policy for his property. The broker arranged a broker branded insurance policy underwritten by HCC. Mr B later looked to claim for fire damage to a barn on the property. But HCC avoided the policy because it said the property was on agricultural land. It said Mr B hadn't told it this when he took out the insurance policy and it said it wouldn't have provided the policy had he done so. Mr B thought HCC's decision was unfair so he referred his complaint to this Service.

I issued a provisional decision uphold this complaint and I said the following:

*"The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.*

*If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it's entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation. If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it.*

*Mr B took the policy out through a broker. But the policy documents are all broker branded. So I think it's reasonable to conclude that the broker was an agent of the insurer when arranging the insurance policy. So I think the insurer can be held liable for the broker's actions – including when gathering the material facts.*

*The crux of this matter is whether Mr B failed to take reasonable care to not make a misrepresentation regarding the usage of the land. In particular HCC says he should have told it that the land was agricultural. I recognise HCC wouldn't have provided the insurance policy had Mr B told it the land was for agricultural use, but the question for me to consider is whether a reasonable person would have acted differently given the questions asked. I'm not persuaded they would.*

*I've paid particular focus on the telephone call when Mr B first spoke to the broker to look to arrange the policy and the broker carried out a fact find. In the first instance, I note, when the call handler asked Mr B about the property, she asked him "what type of property is it?" But before he answered, she further asked "is it detached, semi-detached .....?" So I think he was led into the way he answered the question. Following this, there was a discussion surrounding the type of building Mr B would be living in after which the broker declared it as an "attached bungalow".*

*Further to this, I note Mr B said a few times that the property was in the middle of nowhere. Furthermore he set out it had four outbuildings. I think that this, alongside the actual name of the property, should have alerted the broker to further questions surrounding the property.*

*I recognise that Mr B said the property was a residential property. But I don't think this was unreasonable. It's important to note that the planning application Mr B has sought to obtain says the property is no longer used for agricultural purposes and its clear Mr B considers it a property he resides at and was intending to develop into holiday lets – which he also advised the broker. I haven't seen anything to show Mr B would have reasonably considered this to be insured as an agricultural property. And at no point was Mr B asked whether the land was agricultural land.*

*In listening to the call – and the subsequent call where Mr B took out the policy – I think Mr B has looked to answer the questions to the best of his knowledge and asked several questions throughout to ensure he was adequately insured. Given all this, I'm not persuaded it was fair for HCC to say he failed to take reasonable care to not make a misrepresentation.*

*So I intend to say that HCC should reinstate the insurance policy, remove any record of the policy's avoidance and reconsider Mr B's claim against the terms and conditions of the insurance policy.*

*I also think having the policy avoided has caused Mr B a degree of distress and inconvenience. So I intend to say it should also pay him £300 in compensation to reflect this."*

Mr B responded to accept my provisional decision. But HCC didn't agree and, in summary, raised the following:

- It accepted it was responsible for the actions of the broker and agreed with the relevant law that applied.
- It disagreed that the questions the broker asked Mr B led him in some way to answer them in the way he did. It said the broker didn't suggest an answer.
- It considered my analysis of how Mr B answered the question was pure speculation and didn't agree it was a natural inference that, had the broker not asked this question, Mr B would have provided accurate information as to the buildings and the land use. It said my reasoning here wasn't supported by the general failure to disclose information. It also didn't think Mr B seemed to be someone easily misled or distracted given the discussions around levels of cover.
- It said the fact the property had four outbuildings, was in a rural location and its name means very little and said it's not unusual for rural properties.
- It said Mr B told the broker the property was residential, but it said he failed to disclose the barn was used to store tools and equipment, including a tractor, that were used on the smallholding, which is 13 acres in size.
- The content of the planning application was not made known to broker and so that cannot be relevant. And it didn't think it was fair to criticise the broker for not asking whether the land was agricultural land when nothing had been said to put them on notice of this fact. It didn't think it was fair for me to convert Mr B's failure to disclose into the

broker's failure to ask.

- It reiterated that the simple fact is, had Mr B provided proper information HCC wouldn't have insured his property.

### **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've read and considered all of HCC's response, but it hasn't changed my decision. I'll now explain why.

Firstly, I must set out that CIDRA is clear that "*whether or not a consumer has taken reasonable care not to make a misrepresentation is to be determined in the light of all the relevant circumstances.*" And it gives an example of this "*how clear, and how specific, the insurer's questions were*".

Ultimately, it's for an insurer – or in this case the broker on HCC's behalf – to ask clear and specific questions to gather any information it needs. At no point was Mr B ever specifically ask if the land was used for agricultural purposes or if farm equipment was kept on the land. Mr B considered the land was being used for residential use and that's what he said. For the avoidance of doubt, I'm not saying that the planning application was disclosed to the broker, but it does need to be taken into consideration when assessing *why* Mr B answered the questions in the way he did.

I recognise HCC has said it's unfair to hold the broker for not asking whether the land was agricultural land when nothing had been said to put them on notice of this fact. But, at the same time Mr B can't reasonably be said to have not taken reasonable care not to make a misrepresentation if he wasn't clearly and specifically asked about that.

I maintain that that the way the broker asked Mr B about the type of property being insured was misleading. And I think a lot of information Mr B provided should have alerted the broker to ask more questions.

I do not dispute HCC wouldn't have insured Mr B had it been told the property was on agricultural land. But CIDRA is clear that an insurer can only have remedies for a misrepresentation if it's a qualifying misrepresentation. And, for this to be the case, it has to show Mr B failed to take reasonable to not make a misrepresentation. I remain of the opinion that the way Mr B answered the questions asked aren't out of line with how a reasonable person would have answered them. So I remain of the opinion that it was unfair for HCC to have avoided Mr B's insurance policy.

### **My final decision**

For the reasons I've set out above, it's my final decision that I uphold this complaint and require HCC International Insurance Company Plc to do the following to put things right:

1. Reinstate the insurance policy and remove any record of the policy's avoidance;
2. Reconsider Mr B's claim against the terms and conditions of the insurance policy; and
3. Pay Mr B £300 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 March 2026.

Guy Mitchell

**Ombudsman**