

The complaint

Mrs T and Miss G have complained that HCC International Insurance Company Plc have avoided their property insurance policy. And refused their claim because of this.

Any reference to HCC includes its agents or trading names.

Mrs T and Miss G are represented by a loss assessor who I'll refer to as L.

What happened

Mrs T and Miss G took out a policy through an insurance broker, who I will refer to as R, to cover a property, which Mrs T owns, that has been converted into four flats. As I understand it, Miss G is a leaseholder for one of the flats and it is her home. I also understand that there is at least one other leaseholder and that the other two flats are rented out. Three of the flats have three bedrooms and one has four, assuming that the loft conversion is counted as a bedroom. This makes 13 bedrooms in total in the insured property, or 12 not counting the loft conversion.

Mrs T and Miss G took out the policy in May 2024 through R. They'd had a policy each year from 2020 prior to this through R, but these policies were underwritten by a different insurer. Prior to the policy starting in May 2024 Mrs T and Miss G were sent a copy of a Statement of Insurance by R to check. This stated that the insured property was '15a, 15b, 17a, 17b H Close'. It also stated that the 'Number of bedrooms' was '4'. Mrs T, Miss G and R didn't let HCC know that the number of bedrooms in the property was actually 12 or 13.

Mrs T and Miss G made a claim for possible subsidence damage to the insured property in November 2024.

HCC appointed a loss adjuster to investigate the claim. However, it then decided to avoid the policy from inception in May 2024 on the basis Mrs T and Miss G had misrepresented the number of bedrooms in the property. It explained that if they had disclosed that the property had 12 or 13 bedrooms it would not have provided the policy, as it did not meet its underwriting criteria.

L complained to HCC on behalf of Mrs T and Miss G. However, HCC wouldn't alter its position. So L asked us to consider Mrs T and Miss G's complaint.

One of our investigators did this. He said it shouldn't be upheld because he was satisfied that HCC was entitled to avoid the policy. This was because he was satisfied that it had a right to do so under The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) on the basis that Mrs T and Miss G had failed to take reasonable care not to make a misrepresentation when they took out the policy. And because he was satisfied HCC had shown this constituted what CIDRA describes as a qualifying misrepresentation.

L didn't agree with the investigator's view and has asked for an ombudsman's decision. And it made a number of points in response to the investigator's view, which I detailed in my recent provisional decision.

I issued my provisional decision on 19 March 2026 and set out what I'd provisionally decided and why as follows:

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

First of all, I need to explain that I don't think that our investigator took into account the correct legislation with regards to Mrs T. This is because for CIDRA to be applicable when taking out the policy Mrs T and Miss G, as individuals, needed to be entering into the contract (policy) wholly or mainly for purposes unrelated to their trade, business or profession (my emphasis).

It seems Miss G, as a leaseholder of one of the flats in the insured property, was acting outside her trade, business or profession when taking out the policy. But, even as a joint policyholder, she really only has a quarter of an interest in the policy, as it covers four flats and she only has an interest in one of them.

Mrs T has the freehold of all four flats and rents two of them out for money and presumably received something for selling a lease on each of the other two. This is presumably because it is a commercial business which she uses to make money as a sole trader, even though it is not her main trade or profession. This means when she took out the policy I do not consider she was acting for purposes unrelated to her business.

This all makes deciding the relevant legislation in this case problematic. And I think that, in effect, there were two separate contracts in operation between HCC and Mrs T and Miss G as a result of the policy being taken out in their joint names. One between HCC and Mrs T, which was a non-consumer contract. And one with Miss G, which was a consumer contract. And, by avoiding the policy HCC has effectively avoided both of these contracts.

This means I think I need to consider HCC's right to avoid each contract. And the relevant legislation for the contract between Mrs T and HCC is the Insurance Act 2015. And the relevant legislation for the contract between Miss G and HCC is CIDRA. This means the considerations for each contract are similar, but not identical.

HCC's contract with Mrs T

As I've already explained, I think the relevant legislation for this contract is the Insurance Act 2015 (the Act), as I consider it to be a non-consumer contract. The Act required Mrs T (as the insured) or anyone acting on her behalf when taking out the policy to make a fair presentation of the risk to HCC. This required the disclosure of every material circumstance which Mrs T knew or ought to have known. Or, failing this, disclosure which gave sufficient information to put HCC on notice that it needed to make further enquiries for the purposes of revealing those material circumstances. However, while the Act does not actually require the insurer to ask questions of the insured or their agent to find out about circumstances material to it, I think it can be said to be good industry practice for it to do so. And I have taken this into account when determining the fair and reasonable outcome to this complaint.

Under the Act, if the insurer can show that the insured failed to make a fair presentation, then provided it can show this breach was what the Act describes as a qualifying breach, it then has certain remedies available to it. It will be able to show it was a qualifying breach if it can show it wouldn't have provided the contract at all or would have provided it on different terms. The remedy then depends on whether the breach was deliberate or reckless or neither deliberate nor reckless.

I consider the information provided to HCC on the number of bedrooms at the insured property was wrong. And I do not consider the reference to the number of bedrooms at the insured property, which is referred to as 15a, 15b, 17a 17b H Close, on the Statement of Insurance is in any way ambiguous. I'm satisfied that it was clear that it was referring to the total number of bedrooms in the property as a whole and not an average number per flat or the maximum number per flat. And HCC was effectively told by R that the insured property had four bedrooms. HCC then gave Mrs T the opportunity to check the Statement of Insurance and correct this information. She didn't and therefore I am satisfied she failed to make a fair presentation to HCC.

I have noted L's comments on the broker's responsibility. But, as I see it, R was acting for Mrs T and Miss G when it arranged the policy. So, any error in the information provided by R is their responsibility. The fact that R engaged in dialogue with HCC after Mrs T and Miss G made their claim about the policy, or even before the policy started, in my opinion, does not alter this. And if Mrs T and Miss G think R made an error they would need to make a separate complaint about them.

The next question I need to consider is whether Mrs T's failure to make a fair presentation was a qualifying breach. And I think it was. This is because HCC has provided a copy of an email exchange between a senior underwriter at the underwriting agency which provided the policy and a senior underwriter at HCC which reads as follows:

Email from senior underwriter at the underwriting agency

Following discussions with the broker we have discovered this risk is not your traditional block of flats, but 2 semi-detached houses converted into 4 flats, picture attached for your info.

We have established there is one freehold title deed for both houses, so the broker has placed the risk under one policy correctly.

Although the broker entered the number of bedrooms incorrectly as 4 when they incepted the property with us in 2020 at the time we did not have any underwriting rules regarding the number of bedrooms and A... would not have voided the policy had they been aware of the correct total number of bedrooms.

The broker thinks that is unfair to cancel the policy purely based on the number of bedrooms being incorrect due to a change of insurer as the client has been transparent with them.

I await your thoughts.

Thanks

Reply for the senior underwriter at HCC

I note that A... may not have had any underwriting rules and are (sic) therefore it is not possible to void the policy back to inception.

Whilst I appreciate this is a house conversion the number of bedrooms would not have been acceptable to HCC and as you have stated below, we would not have offered renewal of the policy under this product.

I queried this recently with HCC and asked for a copy of the actual underwriting guide in place at the time Mrs T and Miss G's policy started. And I received a guide that I'm satisfied was in place at this time, which shows HCC would have declined to provide cover for any

property with more than 8 bedrooms. I cannot share this guide with L as it is commercially sensitive information, but I can assure them that I have seen it.

I also received a copy of an email from the same senior underwriter at the underwriting agency as above in February 2024, which is to underwriters at the agency, in which he said the following:

When dealing with B2B Tokio Crown referrals, with immediate effect please decline risks with more than 8 bedrooms as these risks are outside of Tokio Marine HCC risk appetite. I will update the UW product rules to decline these risks in due course.

The evidence provided by HCC satisfies me that it would not have provided the policy (contract) to Mrs T if it had known the insured property had 12 or 13 bedrooms. Therefore I am satisfied that in failing to provide this information and effectively stating the property only had four bedrooms Mrs T's breach was a qualifying one under the Insurance Act.

When HCC avoided Mrs T and Miss G's policy it refunded the full premium. And from this I have assumed it treated Mrs T's breach as neither deliberate nor reckless. However, irrespective of this, as I am satisfied HCC wouldn't have provided the policy if Mrs T had made a fair presentation, it means I am also satisfied HCC's was entitled to avoid the contract it had with her. And I can't see any reason why it wouldn't be fair and reasonable to allow its avoidance to stand.

HCC's contract with Miss G

As I have already explained, because Miss G was a consumer when she took out the policy with HCC I consider she had a separate contract with HCC. And the relevant legislation for me to consider in relation to this contract is CIDRA. This required Miss G, or anyone acting on her behalf, to take reasonable care not to make a misrepresentation when taking out the policy with HCC. And CIDRA makes it clear that one of the things that needs to be considered when determining this is how clear and specific the insurer's questions were.

CIDRA also says that a failure by a consumer to comply with the insurer's request to confirm or amend particulars previously given is capable of being a misrepresentation.

If a consumer does fail to take reasonable care not to make a misrepresentation, then CIDRA goes on to say that the insurer has a remedy against the consumer if it can show that the misrepresentation was a qualifying misrepresentation. And it will be able to do this if it can show it would not have provided the policy at all or would have provided it on different terms but for the consumer's misrepresentation. The actual remedy available to the insurer will depend on whether a qualifying misrepresentation was careless or reckless or deliberate.

So, it is for HCC to show whether Miss G failed to take reasonable care not to make a misrepresentation and that any such misrepresentation was a qualifying one. And I am satisfied it has done this. I say this because I think it should have been clear to Miss G that the reference on the Statement of Insurance provided to her to the number of bedrooms as four referred to the number of bedrooms in the insured property as a whole, i.e. 15a, 15b, 17a and 17b. I say this because the insured property is listed as all four of these addresses and, as I have already said, I do not consider that the Statement of Insurance suggests in any way that the reference to the number of bedrooms relates to the average number in each flat or the maximum number in any one flat. Miss G failed to comply with HCC's request on the Statement of Insurance to let it know if there were any inaccuracies in it. Whereas, I think Miss G should have told it through R that the number of bedrooms on the Statement of Insurance should be 12 or 13. In failing to do this I think Miss G did fail to take

reasonable care not to make a misrepresentation.

As with Mrs T, I think that, in arranging the policy R acted as Miss G's agent. Therefore in stating the number of bedrooms at the property was four to HCC and also failing to correct the reference to this in the Statement of Insurance, I consider it failed to take reasonable care not to make a misrepresentation on behalf of Miss G. And if Miss G is unhappy about this she will also need to make a separate complaint to them.

And based on the evidence I have set out above from the underwriters at the underwriting agency I am satisfied that HCC has shown that Miss G's misrepresentation and any misrepresentation on her behalf was a qualifying one. And that it was entitled to avoid the contract it had with her because of it.

In summary, while I have noted L's comments, I'm satisfied that HCC was entitled to avoid the contracts it had with Mrs T and Miss G and so their joint policy. And that this means it does not have to deal with their claim under it. And this means on the basis of what is fair and reasonable in all the circumstances, it is not appropriate for me to uphold Mrs T and Miss G's complaint.

My provisional decision

For the reasons set out above, I've provisionally decided not to uphold Mrs T and Miss G's complaint about HCC International Insurance Company Plc.

I gave both parties until 2 April 2026 to provide further comments and evidence in response to my provisional decision.

HCC has not provided any further comments or evidence.

L have provided the following further comments, which I have numbered for the sake of ease.

1. The policy that started in May 2024 was not a new business presentation. And there was a document which was expressly issued as a renewal invitation. This framed the insured's duty by reference to any change since the policy inception or last renewal date rather than requiring a complete re-presentation of the risk. And there was no material change to the underlying risk and the configuration of the property, including the fact that it comprised four flats. In L's opinion, Mrs T and Miss G were entitled to place weight on the continuity of cover, continuity of placement through the same broker and the absence of a query raised at renewal in relation to the existing risk profile.
2. The evidence shows that the renewal of the policy was not a case of a lay consumer presenting a risk in isolation. It was a broker led placement involving an underwriting interaction and underwriting knowledge of the nature of the property. And the broker had previously written to the underwriting agency acting for HCC in 2024, who I'll refer to as M, when it was representing the previous insurer confirming that the type of property insured was amended to 'purpose built (four maisonettes) and that 15a had a loft conversion. And the May 2024 renewal invitation contained an endorsement which referred to the fact that the insureds had declared a 'mixed occupancy' at the insured property. And this confirmed that unoccupancy conditions were to apply to each self-contained dwelling. All of this demonstrates that the risk was being treated as a multi-story property with mixed occupancy, not as a single dwelling.
3. Correspondence between R and M and M's actions in dealing with the issues of the number of bedrooms shows insurance professionals themselves did not see the position

as straightforward.

4. They remain concerned by my reliance on underwriting evidence that has not been disclosed to them. They appreciate the underwriting guides may contain commercially sensitive material, but where such evidence is central to the outcome of a complaint, procedural fairness requires the complainants to be given sufficient information to be able to understand the basis of the conclusion I have reached and respond meaningfully to it.
5. The placement history of the risk is relevant in that the insured property had been insured through the same broker for a number of years. And there was no express sign of a different insurer in the 2024 renewal papers. And there was nothing on the renewal papers that explained that the new insurer might have a different underwriting approach.
6. My provisional decision treats R's role too simply. And the allocation of responsibility requires a more nuanced assessment. That is, is it fair and reasonable in the circumstances of this particular case for the consequences of any misunderstanding as to the number of bedrooms at the insured property to fall solely on Mrs T and Miss G.
7. They respectfully disagree with my view that the reference on the Statement of Insurance to the number of bedrooms is clear and unambiguous. This is because the insured property was divided into multiple self-contained units, each with its own address. In this context the issue is not as straightforward as if the risk had been a single-dwelling family home. Mrs T and Miss G maintain that the problem arose from the way the information relating to the number of bedrooms was interpreted in the placement process, not from any attempt to disguise the nature and size of the risk.
8. Mrs T and Miss G relied on a professional broker and a placement history of the risk as a clearly identified mixed occupancy property with four separate addresses. And it is not a straightforward case of consumer misrepresentation with the entirety of responsibility resting with Mrs T and Miss G.
9. M changed the insurer (underwriter) of the scheme it was running. And any change in underwriting appetite stemmed from this rather than any change in the nature of the risk or its presentation.

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 would just like to clarify first of all that for the purposes of this decision and my consideration of the relevant legislation, I consider Mrs T and Miss G to be co-insureds, as opposed to joint policyholders. This does not alter my view that when they took out the policy in May 2024 with HCC they each entered into a separate contract with it. And each had different responsibilities when doing so, as a non-consumer and a consumer. And it still remains my view that Mrs T's obligations were under the Insurance Act 2015 (the Act) and Miss G's under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

For the sake of ease and clarity, I will deal with each of L's points using the same numbers as above.

1. I accept that the policy that started in May 2024 was as a result of a renewal process. But this does not alter the fact that two new contracts started. One between Mrs T and

HCC, which required Mrs T to fulfil her obligations under the Act. The other between Miss G and HCC which required her to fulfil her obligations under CIDRA. And I am satisfied that the Statement of Insurance Mrs T and Miss G were provided with by HCC through M and R made it clear to them both that the information on it had been provided by them or R. And if there were any inaccuracies or omissions, they needed to contact R to let them know. And I still think that on seeing the number of bedrooms as four, Mrs T and Miss G should have contacted R or M to let them know this was incorrect. And that by failing to do so Mrs T breached her duty under the Act to make a fair presentation and Miss G failed to take reasonable care not to make a misrepresentation under CIDRA. This is because I consider it should have been clear to both of them this information was incorrect. And I do not consider the fact that - so far as they were concerned - the policy was renewing, altered these responsibilities under the Acts.

2. I can see from the Statement of Insurance that HCC was treating the risk it was being asked to insure as a mixed occupancy property. And that it was considering each flat separately in terms of occupancy. But this doesn't alter the fact that it accepted the risk on the basis the property as a whole had four bedrooms. I presume that it saw it as four one bedroom flats, which I consider would be a reasonable assumption for it to make, based on the location and the sum insured. However, it was not HCC's responsibility to check exactly what risk it was being asked to insure. It was for R and Mrs T and Miss G to make sure it was presented to them on the basis of exactly what it was.
3. I do not accept that the actions of staff at R and M suggest they did not see the position with the risk proposed at straightforward. As I see it, all they were attempting to do after Mrs T and Miss G made their claim was establish what HCC would have done if the correct number of bedrooms had been made clear to it when the policy started in May 2024.
4. I have provided as much detail as I think is appropriate on the underwriting evidence I have considered. And I believe I had given sufficient information to L and Mrs T and Miss G on it for them to understand the basis of the conclusion I have reached because of it. They have seen the exact wording of the emails from the underwriter involved and they know that I have seen an underwriting guide that I am satisfied was in use at HCC in May 2024. I should also say again that for the reasons explained in my provisional decision, I'm satisfied that due to this evidence HCC has shown that Mrs T's breach was a qualifying one and that Miss G made a qualifying misrepresentation.
5. I think it was clear from the renewal invitation HCC was the insurer. I say this because there was an endorsement on the renewal invitation provided by M to R for Mrs T and Miss G which referred to HCC as the insurer. And I think this means HCC fulfilled its obligation to provide Mrs T and Miss G with clear, fair and not misleading information about its role. I appreciate the renewal invite did not mention the change of insurer, but R should have been aware of this and could have highlighted it to Mrs T and Miss G if they felt they needed to do so. And I do not consider HCC was obliged to point out that it may have a different underwriting criteria to the previous insurer. And, even if it did, I am not persuaded any failure on its part to do so would have prejudiced Mrs T and Miss G's position. I say this because I can't see how this in itself would have led to them picking up on the fact the number of bedrooms shown on the Statement of Insurance was incorrect.
6. In my opinion, the Statement of Insurance provided by M for HCC made it very clear that R was acting for Mrs T and Miss G and not for HCC. I say this because it referred to it as a record of information provided by 'you or your broker, intermediary or agent acting on your behalf'. So, I think the correct legal position is that R was acting for Mrs T and Miss G. I also consider that in determining the fair and reasonable outcome to this

complaint, it is appropriate for Mrs T and Miss G to be held responsible for R's actions, bearing in mind the reference to them as their broker on the Statement of Insurance and the fact that they chose to use them, presumably because they were satisfied they would represent their best interests. If they are now unhappy about anything R did or think they failed in any way, Mrs T and Miss G will need to complain separately to them.

7. While I have noted L's comments, it remains my view that the reference to the number of bedrooms on the Statement of Insurance is clear and unambiguous. I say this because the property to be insured was shown as 15a, 15b, 17a and 17b, which I think makes it clear the number of bedrooms must be referring to the number of bedrooms across all four flats in the property, as opposed to the average number per flat or the maximum number in any one flat. And the responsibility for correcting this did ultimately fall on Mrs T and Miss G as the co-insureds and policyholders. As they saw, or should have seen, the Statement of Insurance and knew the make-up of the four flats (or in Miss G's case she must have known that there were more than four bedrooms in total in all the flats). And I am satisfied that they should have let R know that the number of bedrooms shown was wrong. And then it would have been for R to let HCC know via M. However, even if Mrs T and Miss G had let R know and it had failed to inform M or HCC, I consider this failing would be Mrs T and Miss G's responsibility, as R was acting as their agent.
8. As I have already explained, I consider that as far as taking out the policy and entering into contracts with HCC are concerned, this is a straightforward case of a breach of Mrs T's duty to make a fair presentation of the risk to HCC. And a failure by Miss G to take reasonable care not to make a misrepresentation. The relevant legislation placed obligations on them and/or their agents. And my decision on the fair and reasonable outcome to their complaint is largely based on the fact that they both failed to meet these obligations. This is not to say they acted recklessly or deliberately in failing to meet these obligations, but I do consider their failure or the failure on their behalf by R to correct the information on the Statement of Insurance on the number of bedrooms was careless.
9. I accept that it was M's decision to change underwriters. And that it was this that led to a change in the underwriting criteria. However, this does not alter the fact that M, on behalf of HCC, presented the information it held about the risk to Mrs T and Miss G via R. And that it was for Mrs T, Miss G or R to let them know if it was wrong. The fact the number of bedrooms hadn't caused an issue before and may not have done if the underwriter had remained the same, does not alter the obligations Mrs T and Miss G had when taking out their contracts with HCC.

In view of what I have said, it will be clear that it remains my view that HCC's decision to avoid Mrs T and Miss G's contracts with it, and so the policy as a whole, was reasonable in the circumstances. And this means I do not consider HCC was obliged to deal with their claim under the policy.

My final decision

For the reasons set out in my provisional decision and above, I have decided not to uphold Mrs T and Miss G's complaint about HCC International Insurance Company Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Miss G to accept or reject my decision before 6 May 2026.

Robert Short
Ombudsman