

The complaint

Mr E complains that QIC Europe Limited (QIC) avoided his home insurance policy and declined to pay his claim.

What happened

Mr E took out home insurance with QIC through an online cashback website.

Following a leak at the property Mr E made a claim on his policy for damage to kitchen units. QIC said that when applying for the policy Mr E had answered the question about who lived at the property incorrectly. They said that Mr E had declared the property was occupied by him and his family, but Mr E also had a friend living at the property. QIC considered this to be a qualifying misrepresentation which entitled them to avoid the policy, decline the claim and refund the policy premiums.

Our investigator looked into the matter but didn't think that QIC had shown there had been a qualifying misrepresentation. He said that QIC should deal with the claim in line with the terms and conditions of the policy, remove any record of the policy being avoided, and pay Mr E £150 for distress and inconvenience.

QIC doesn't agree with the investigator and has asked for an ombudsman's decision. They say that Mr E's friend was not a family member. They said that the online application offered more appropriate descriptions of the living arrangements, and had they known the true situation they would not have offered insurance.

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.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (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.

QIC thinks Mr E failed to take reasonable care not to make a misrepresentation when he completed the online application saying the property was occupied by "*You and your family*".

I've looked at the question asked by QIC during the online application process. It asks, "*Who is the property occupied by?*". The customer is asked to select an answer from a drop-down box. The options are "*You as sole occupier*", "*You and your family*", "*You and your family with paying guests/lodgers*", "*You and others in a shared property*", and "*Not by me, by tenants*". QIC say that Mr E should have said that he was either living with a paying guest/lodger or that he was in a shared property.

QIC refer to the policy booklet at page 7 which defines family - "*As long as they permanently live with you in your home during the period of insurance, and they are not paying for the accommodation: a. your husband, wife, partner or civil partner; b. your children; and c. other members of your family.*" I don't find this explanation particularly helpful as it doesn't actually define family but simply suggests who could be included as family. It also fails to say what "*other members of your family*" means.

Mr E said he selected "*You and your family*" as none of the other options reflected his friend's status as a non-paying guest. He said that she was a close friend who was staying temporarily whilst she purchased her own property. He said he treated her as one of his family and felt he had selected the most accurate option. He also referred to a help-text on QIC's website which said that temporary dependants such as parents should be counted as family.

Whilst I accept that the term 'family' has many different meanings in society today, I don't think that Mr E's friend could fairly be described as family in any sort of official capacity. However, I don't think that either of the options suggested by QIC fits Mr E's situation any better than the option he selected himself. There is no further explanation of the options given at this point in the application process, or instructions if the customers circumstances don't fit any of the options. QIC say that the wording of the options would indicate to customers that they were interested in occupiers who were not family. I don't think this is obvious at all and if it was important, I think QIC should have specifically highlighted this. I've seen nothing to indicate that Mr E would have been aware at the time that insurance would not have been offered if he were living with anyone other than family.

QIC say that when they queried with Mr E who his friend was, he replied that she was a temporary lodger. They believe that this shows that Mr E viewed her as a lodger and should therefore have said he was living with a paying lodger. However, Mr E has always been clear that his friend was not paying, and therefore I don't think it fair to say that he should have chosen this option. This clearly didn't fit his circumstances.

QIC also say that Mr E could have selected that he was living in a shared property. However, I don't think the property could properly be described as a shared property as Mr E was a homeowner who usually lived just with his partner. Under QIC's definition, the partner would be family and so the house would be occupied by Mr E and his family. I don't think that the addition of a non-paying guest would make the property into a shared property. So, I don't think this option accurately reflected Mr E's situation either.

QIC suggest that if Mr E had been unsure which answer to select, he should have contacted them. However, I think it would be reasonable to expect QIC to make sure that all necessary options were available, that explanations and definitions if required were provided at the point of sale, and that customers were asked to contact QIC if their circumstances didn't fit the available options. As they didn't do this, I don't think Mr E acted unreasonably in choosing the answer that best suited his situation.

QIC also say that the policy terms and conditions make it clear that Mr E should tell them about any changes in circumstances, including if the property is no longer to be occupied only by him or his family. However, Mr E's friend was staying at the property before the

insurance policy began so there was no change in circumstance.

I'm satisfied that although the question asked by QIC during the application process was clear, I think the options available in the answer were not. I think Mr E took reasonable care to answer the question as accurately as he could with the options provided. I therefore don't think that there has been a qualifying misrepresentation. I'm satisfied that QIC acted unfairly and not in line with CIDRA, and I will be upholding Mr E's complaint.

QIC should deal with Mr E's claim in line with the terms and conditions of his policy at the time. They should also remove any record of the avoidance from internal and external records.

I also have to consider compensation for distress and inconvenience. Our investigator awarded the sum of £150 and I think this is fair. Mr E had his policy avoided and his claim declined which caused him distress. He also had to find alternative insurance for his property which was made harder due to his policy with QIC having been avoided.

My final decision

My final decision is that I uphold this complaint and require QIC Europe Ltd to:

- Consider Mr E's claim under the terms and conditions of his policy;
- Remove any reference of their avoidance of the policy from all internal and external records; and
- Pay Mr E £150 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 1 June 2022.

Elizabeth Middleton
Ombudsman