

The complaint

Miss C and Mr C have complained about the decision by Accredited Insurance (Europe) Ltd to void (cancel from the start) their home insurance policy.

What happened

Miss C and Mr C took out a home insurance policy with Accredited through a price comparison website. A few months later they made a claim following a burglary when various tools were stolen. During its investigation of the claim Accredited found out information that it hadn't been made aware of when Miss C and Mr C had applied for the policy. In particular it thought they hadn't answered correctly a question about whether the property was occupied.

It said if it had been aware that the property was not occupied, it would have declined to offer them cover. It told Miss C and Mr C they had misrepresented the risk to it in a careless way. So it voided the policy from the date it had been first taken out and refunded the premiums.

Miss C and Mr C brought a complaint to this service. Our Investigator didn't uphold it. He didn't think Accredited had treated them unfairly.

As Miss C and Mr C didn't agree, the matter has been referred to me.

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 Representation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out an insurance policy like the one Miss C and Mr C bought. The standard of care is that of a reasonable consumer.

If a consumer fails to take reasonable care, then the insurer has certain remedies providing the misrepresentation is what is referred to in CIDRA as a qualifying misrepresentation. The insurer will need to prove it's a qualifying misrepresentation by showing the consumer failed to take reasonable care and that it wouldn't have offered the policy at all or offered a policy on different terms if it had known the true circumstances.

I've looked at the questions Miss C and Mr C were asked on the price comparison website. In response to the question "*Is this your main home*" they selected the option "*Permanent main residence*" and said the house wouldn't be left empty for more than 30 consecutive days. They also said that on a typical day they were at home "*Night and day*".

When they were directed to Accredited's website, they were asked more questions. To the question "*Who is the property occupied by?*" they answered "*You and your family*". They also said the property was normally occupied "*Both day and night*" and that it was their main residence.

I think those were clear questions. Next I need to decide whether a reasonable person would consider their answers to be correct.

According to Accredited's surveyor Mr C told him he slept at the property 2 or 3 nights a week. Miss C says he slept there 4 or 5 nights a week.

After his inspection Accredited's surveyor reported that the property was being fully renovated by Mr C. The photos taken by the surveyor support the fact that a lot of building work was going on at the time.

Miss C said "*The property is frequented by myself and family members regularly. These frequent visits are at varying times of the day and days of the week.*" She also said that it was the only property she owned and provided evidence that she'd moved her belongings into the property.

Miss C has also referred me to the policy definition of "*Unoccupied*" which is as follows:

*"We consider **your home** to be unoccupied when it is not lived in by **you or your family** for more than 30 days in a row. Lived in means slept in frequently (**we will not accept visits to the home or occasional overnight stays as living in your home**)."*

She thinks that because Mr C slept in the property frequently, it shouldn't be considered to have been "*unoccupied*".

Miss C and Mr C wouldn't have been aware of this definition when they answered the above questions as they wouldn't have been given the policy wording at that point. So I think they should have answered the questions based on the ordinary everyday meaning of "*occupied*" which in this context I take to mean "*lived in*". In addition the definition of "*occupied*" in the policy only relates to changes in circumstances that the policyholder needs to tell the insurer about.

Essentially it seems to me that Miss C and Mr C are more focussed on the narrow requirement that the property should be slept in frequently than the broader requirement that the property should normally be lived in night and day by them and their family. Although the photographic evidence shows that someone could stay in the property overnight, it does not give the impression to me of a family living there. Also visiting the property every day is not the same as living there. On that basis I think it was reasonable for Accredited to say that Miss C and Mr C hadn't given them correct information when they took the policy out.

Accredited has shown that if Miss C and Mr C had told it that the property wasn't occupied, it wouldn't have provided cover. This means I'm satisfied the misrepresentation was a qualifying one.

Accredited has said that the misrepresentation was careless. I've looked at the actions Accredited can take under CIDRA in these circumstances. It can:

- avoid the policy from the start date;
- treat the policy as though it never existed and not deal with any claims; and
- it must return any premiums paid.

As that is what Accredited has done, I don't think it has treated Miss C and Mr C unfairly or unreasonably.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mr C to accept or reject my decision before 12 September 2024.

Elizabeth Grant
Ombudsman