

The complaint

Mrs K complains about Gresham Insurance Company Limited (“Gresham”) after she made an accidental damage claim on her home insurance policy. She also complains that Gresham settled the claim proportionately.

What happened

Mrs K has home contents insurance with Gresham. The policy was taken out in 2022 and renewed in 2023.

In January 2024 someone accidentally spilled a drink over her laptop, tablet, and sofa. So, Mrs K reported the matter to Gresham.

Gresham reviewed the claim and concluded that it would cover only 54% of Mrs K’s total claim. It explained that Mrs K had not disclosed six prior claims, four of which were with different underwriters and two with Gresham itself. Mrs K, however, contends that Gresham would have been aware of at least two of these previous claims.

Mrs K was disappointed that her full claim was not paid. She stated that she pays her premiums without issue and believes that, as Gresham underwrites the policies, they should already be aware of her previous claims. Consequently, she feels she should not be penalized for not disclosing them. Mrs K wants the items she claimed for to be replaced or repaired, leading her to raise a complaint.

Gresham said during routine checks carried out six previous undisclosed claims were discovered. Gresham said any undisclosed claims would affect any settlement offer made. Gresham said Mrs K has a duty to answer all questions honestly when purchasing a policy. So, it applied a proportionate settlement to any future claims to reflect the additional premiums she would have paid had it been aware of the previous claims. Mrs K didn’t accept Gresham’s response and so she referred her complaint to this service.

Our investigator looked into the complaint and concluded that, although Mrs K didn’t disclose the previous claims, Gresham hadn’t shown it would have offered the policy on different terms. So, the complaint was upheld, and the investigator recommended Gresham settle the claim in full.

Following the investigator’s initial view Gresham provided some further evidence and so the investigator looked at everything again and issued a further view. She said Mrs K hadn’t disclosed the previous claims and Gresham had shown it would have charged a higher premium if it had been aware of the claims. The investigator concluded Gresham had acted fairly in reducing the settlement proportionately since it was one of the remedies available under the relevant legislation.

Mrs K didn’t agree with the view. She says she told Gresham about her previous claims history on two occasions in 2023 and it agreed to update her policy. Mrs K says her previous claims were home emergency so shouldn’t be classed as claims. Because Mrs K didn’t agree the complaint has come to me for a final decision.

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.

Misrepresentation

The relevant law in this case is the Consumer Insurance (Disclosure and Representation) Act 2012 ("CIDRA"). This requires the consumer – in this case Mrs K – to take reasonable care not to make a misrepresentation to the insurer, Gresham. And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is a *qualifying* one. For it to be qualifying 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 depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Gresham say Mrs K failed to take reasonable care not to make a misrepresentation when she took out her policy and when it renewed because she failed to disclose previous claims.

When Mrs K took out the policy in 2022, Gresham sent a letter enclosing her policy documents. In the statement of fact it says, "*you or another person insured by this policy have made the following claim(s) in the last five years: no claims recorded.*" At the top of the statement of fact it says, "*when you took out your home insurance, you confirmed the information you gave us was complete and accurate. Please take a moment to check everything's still correct.*" So, I think it's clear that if there was anything incorrect Mrs K needed to contact Gresham and let them know or it may affect her cover.

Mrs K's renewal documents were sent to her on 19 May 2023. The documents confirm if anything is incorrect within the policy then Mrs K should call Gresham straight away. And that her cover may be affected if the information isn't complete and accurate.

I have seen Mrs K's Claims and Underwriting Exchange (CUE) entries and there are a number of claims from 2018. So, I'm satisfied there were claims that should have been disclosed when Mrs K first took out her policy in 2022 and again when the policy renewed in 2023.

Mrs K says the information held on CUE is incorrect, and that Gresham should have been aware of some of the claims since her insurer was Gresham at the time of the claims. Mrs K also says she told Gresham about the claims before taking out the policy. But I haven't seen any evidence of this.

But regardless of whether Mrs K did disclose the claims or thought she didn't need to as Gresham were already aware of them; she had the opportunity to review her submission when she received her policy documents at inception and renewal. And I would have expected her to check the cover at that stage to ensure the details were correct. And I can't see she did that.

So, I'm satisfied the question asked was clear and Mrs K failed to take reasonable care not to make a misrepresentation.

I will now move on to whether the misrepresentation was a qualifying one. And what Gresham would have done had it been aware of the correct information.

Gresham has provided evidence from its pricing team that shows Mrs K's policy would have cost more if she had declared her claims history correctly. And so, I agree with Gresham's view that Mrs K made a qualifying misrepresentation.

I have looked at what Mrs K has said about what happened when she took out her policy and when she renewed. I can understand why she's frustrated; she perhaps didn't appreciate the potential consequences of her actions. But I can't say Gresham treated her unfairly.

Gresham provided pricing evidence that shows if it had been aware of the previous claims it would have charged Mrs K more for her policy. Mrs K paid 54% of the price of her policy in 2022 so it's fair that Gresham settle the claim in line with that.

Taking all of this into account I'm satisfied Gresham acted fairly and reasonably when settling Mrs K's claim proportionately. And its actions are in line with the actions it can take in accordance with CIDRA.

Following our investigator's view Mrs K raised a number of issues including quoting relevant law and Financial Conduct Authority (FCA) guidance. I would like to assure Mrs K I have considered relevant legislation and guidance for the purposes of this decision. Under the industry rules, firms have a duty to give consumers the information they need at the right time to allow them to make informed decisions.

When Mrs K took out her policy with Gresham and at each renewal, she was sent documents outlining the consequences of providing inaccurate or incomplete information. These documents explained that claims might be refused, cover could be cancelled, or premiums might be adjusted. After reviewing the information provided, I'm satisfied that Gresham adequately informed Mrs K of these potential impacts.

Mrs K says she told Gresham about her previous claims history in June 2023 and December 2023, but it failed to update her policy. As previously explained, I haven't seen any evidence Mrs K disclosed the claims to Gresham. And when she was provided the policy documents in June 2023 and December 2023, I haven't seen anything to show she contacted Gresham to advise the documents were incorrect.

Mrs K says the claims recorded on CUE are home emergency claims and so don't need to be disclosed since they don't impact the policy. But the claims I've seen aren't home emergency – there is accidental damage, storm damage, and escape of water. So, I'm not persuaded these are home emergency and shouldn't be declared.

Mrs K says Gresham carry out checks before providing any insurance policy so would already know about previous claims. But Gresham asks customers to provide information in order for it to decide whether to offer an insurance policy, and Mrs K has a duty to disclose previous claims regardless of who the insurer was at the time of the claim, and whether the claim was paid or not.

Conclusion

It isn't for the insurer to ensure the customer has answered the questions correctly. It is the customer's responsibility to check they have answered everything correctly. Mrs K had a chance to do this when she received the policy documents.

I understand this isn't the outcome Mrs K is hoping for. But any decision I make must be both fair and impartial. And in this situation I think Gresham has acted fairly.

My final decision

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 1 April 2025.

Kiran Clair
Ombudsman