

The complaint

Mrs M complains that Ageas Insurance Limited wrongly avoided her motor insurance policy on the basis that she'd misrepresented the facts when she took it out.

What happened

Mrs M bought the policy through a broker ("firm A") in January 2019 and it was renewed in January 2020. In February 2020 Mrs M's car was stolen. Ageas agreed to settle the claim on 24 February 2020, subject to verifying the car's V5 registration document. But the address on the V5 was Mrs M's previous address, not the one on the policy. Mrs M was asked about it, and as Ageas still had concerns, another advisor spoke to Mrs M on 25 February 2020. He arranged a three-way call with the DVLA. During the call it emerged that Mrs M had an endorsement on her licence from October 2018 that Ageas hadn't been aware of.

Mrs M gave various explanations to Ageas during the call. One of them was that she'd told firm A about the endorsement, so the details should have been passed to Ageas. Ageas said it wouldn't have offered her cover had it been aware of the endorsement. It referred to the provisions of the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). It said Mrs M hadn't taken reasonable care not to make a misrepresentation and hadn't checked the documents issued to her by firm A.

Firm A had arranged insurance for Mrs M since 2016 at 'address A'. In 2019 when she bought the policy with Ageas, she told firm A she now lived at 'address B'. Ageas noted that when it asked about her address during the validation calls Mrs M said she still stayed at address A sometimes. Various documents showed that was still her address. In its final response letter, Ageas told Mrs M that had it known she lived at address A - or at two addresses - that would have been unacceptable to it, as well as the endorsement.

Mrs M's solicitor said Ageas couldn't raise issues about the endorsement and Mrs M's address after it had affirmed policy cover by agreeing to cover the claim. He said it had time to conduct its full investigation before doing that. And in his view, firm A was at fault, as it didn't provide accurate documents to Mrs M, or ask her to check them.

He said Mrs M lived at address B and only stayed at address A (her former home) at times. The solicitor said Ageas had accepted her explanation (and it wasn't part of the reason given for declining the claim). He said the real issue was the endorsement. He said Mrs M could show that despite Ageas saying it was unacceptable, she was able to get a quote when declaring it, directly from Ageas. He said that after this was put to Ageas, it accepted that it would have offered cover to her directly (but not through a broker, as different underwriting criteria apply).

The solicitor said that resulted in an unreasonable and unfair outcome for Mrs M. He also thought it wasn't in line with CIDRA's requirements. He said if it was accepted that Mrs M had made a misrepresentation (which he didn't accept) it was only a careless one, not made by her deliberately or recklessly. He said Ageas could only avoid the policy if it could show it wouldn't have offered cover to Mrs M *on any terms* - and it couldn't do so.

One of our investigators considered Mrs M's complaint. She thought Ageas had acted reasonably. She said even if Mrs M had told firm A about the endorsement, the onus was on her to check that the details it recorded were correct on the documents it sent her. Given the concerns about Mrs M's address, she thought it was reasonable for Ageas to carry out further enquiries after saying it would pay the claim. She said Ageas had explained that its retail arm would have offered cover for the endorsement (for an increased premium) for commercial reasons.

Mrs M's solicitor then provided extensive evidence that Mrs M lives at address B. He said she only stays at address A around once a fortnight. He said firm A had said that in 2019, it asked Mrs M to confirm that all the details set out in her previous policy were the same, which she did. On that basis, it sent her a proposal form, setting out the details she'd previously declared. He said Mrs M accepted that an error was made. She didn't sign and return the form or tell firm A that any of the details on the proposal form were wrong. In his view that meant she'd made a careless mistake – which didn't allow Ageas to void the contract. He said the means by which a policy was obtained weren't relevant under CIDRA.

As there was no agreement, the complaint was passed to me for review.

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.

Mrs M's address

As queries arose about Mrs M's address on the V5 document, I think it was reasonable for Ageas to put the settlement on hold until it was satisfied with her response to its queries, in line with standard industry practice.

Having heard the recording of the call between Mrs M and Ageas's second advisor about this issue, I think Mrs M was vague in some of the responses she gave to his questions. I think it was reasonable for him to arrange a call with the DVLA. The DVLA's advisor asked Mrs M to amend her address on its records and then read out the endorsement. Ageas's advisor later questioned Mrs M about it and warned her that as Ageas wouldn't have offered cover had it known about the endorsement, her claim may not be dealt with.

Ageas said in its final response letter that it wouldn't have offered cover had it known Mrs M lived at address A, or at two addresses. But that wasn't the reason it gave initially for avoiding the policy. And Mrs M's solicitor says Ageas later accepted that Mrs M lived at address B, as she's provided substantial evidence of it. We asked Ageas about that recently. It didn't say it was now satisfied with the details provided about Mrs M's address. But it said the avoidance of the policy was based on the undisclosed endorsement.

The endorsement

Mrs M initially told the advisor that she didn't mention the endorsement to firm A, as she'd paid a fine. She then said she was sure she'd provided the details to it. But she accepted that she hadn't checked the proposal forms to ensure the facts set out in them were right. In a further call with Ageas Mrs M said it was firm A's fault that Ageas wasn't told about the endorsement. She said there was no section on the proposal form for details about driving offences. When the advisor pointed out that there was a section for them (which had been left blank) Mrs M said firm A didn't tell her to check the form. Later in the same call, Mrs M said she was never asked any questions by firm A - despite having said she'd told firm A about the endorsement. So the accounts she gave Ageas were very inconsistent.

CIDRA

CIDRA 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. 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 must show it would only have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out several considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether a qualifying misrepresentation was deliberate or reckless, or just careless.

Reasonable care

It was firm A's role to gather information from Mrs M and pass it to Ageas on her behalf. The proposal forms each contained a section listing the details Mrs M had provided to firm A about motoring convictions, which were blank. The motoring convictions section said

"Please show any unspent convictions, driving licence endorsements, fixed penalty offences or pending prosecutions which you or any other person who will drive have incurred in the last five years."

I think that was a clear question. Mrs M accepts that she didn't check the proposal forms, even though there's evidence that firm A issued a covering letter with each one asking her to do that. The proposal forms said the policy would be based on the details set out in them and pointed out that CIDRA applied. They also carried a warning that said not supplying complete and accurate information may mean that the policy would be invalid.

As Mrs M didn't check that the information she'd provided was correct, or contact firm A to amend it, the details firm A passed to Ageas about Mrs M's driving history were wrong. I think Ageas was entitled to rely on the information firm A provided, just as it would have done had Mrs M given it to Ageas directly. The onus was on Mrs M to ensure the policy was based on the correct information. So I think it was fair for Ageas to conclude that she didn't take reasonable care not to misrepresent the facts, either in 2019 - when she took the policy out - or in 2020, at renewal.

Qualifying misrepresentation and remedy

Ageas has provided underwriting criteria that shows had it known about the endorsement, it wouldn't have provided cover. I think that means Mrs M's misrepresentation was a qualifying one, as the information would have made a difference to Ageas.

Ageas didn't say Mrs M's misrepresentation was deliberate or reckless. It treated it as careless. If there's been a careless misrepresentation, an insurer can only avoid the policy if it can show it wouldn't have offered cover on any terms. I think Ageas was able to do that, so it acted reasonably in avoiding the 2019 and 2020 policies and returning Mrs M's premiums.

I've considered the argument put forward by Mrs M's solicitor on this issue. I think Ageas is entitled to have different underwriting criteria for products sold directly and those sold through brokers such as firm A. Ageas says it wanted to boost direct sales by accepting the endorsement (for a 26% rise in the premium). We don't interfere in commercial matters such as this - and I don't think Ageas's decision amounts to a breach of CIDRA's provisions. As

any consumer with the same endorsement who had declared it to a broker wouldn't have been offered cover, I don't think Mrs M was treated unfairly.

Taking everything into account, as I think Ageas acted reasonably in avoiding Mrs M's policy and not dealing with her claim, I can't uphold Mrs M's complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 16 December 2020.

Susan Ewins

Ombudsman