

The complaint

Mr B complains that Soteria Insurance Limited, (“Soteria”) voided his motor insurance policy and refused to pay his claim.

What happened

Mr B took out his motor insurance policy with Soteria through a price comparison website in August 2017 and renewed this in August 2018. When his car was stolen in August 2019, Mr B attempted to make a claim under the policy. He was told that his policy was void from the outset due to not declaring information.

Soteria said that, following a claim registered after Mr B’s vehicle was stolen, it came to light that Mr B was not the registered keeper of the vehicle. When the policy was taken out, Mr B declared himself as the registered keeper, which was incorrect as it was his father-in-law whose name was on the V5 certificate. It considered this to be a careless qualifying misrepresentation and in September 2019 his insurance policy was declared as void from its renewal in August 2018 and premiums refunded from that point.

It also came to light following the claim that Mr B had failed to declare a motoring conviction from August 2018 (an SP50 with 3 penalty points) and that there was concern over the fact that the vehicle was a South African import. Mr B had disclosed the vehicle as a UK Spec European Import when the policy was taken out. Soteria said that, whilst there was some confusion in relation to this and whether it was disclosed, this wouldn’t matter as Mr B had incorrectly disclosed himself as the registered keeper so the policy wouldn’t have been offered in any event.

Mr B says that he didn’t attempt to omit information or provide false information and says that he has been transparent in providing the information. He says that he confirmed that ‘Parent’ was the owner of the vehicle in the online fact find on the price comparison website, which was as per the V5 certificate. He also confirmed that he was the user and keeper of the vehicle. Mr B says that he checked the legal definitions when completing the questions which confirmed that the registered keeper was not the same as the registered owner.

In relation to the vehicle being an import, Mr B says that he confirmed it was an import in the online fact find on the price comparison website. There were three options available: US import, Japanese import or UK spec European import. As the vehicle was built to UK specifications and had undergone registration and MOT in the UK, the latter was the most appropriate. Mr B says that the car was registered in the UK in 2016 but is a 2011 model which is evident from the V5 which could have been checked by the insurer.

In relation to the traffic violation, Mr B says that this occurred shortly after the insurance start date and that it was an oversight for not contacting the insurer to inform it of this.

Mr B brought his complaint to us and our investigator thought it shouldn’t be upheld. Although it was accepted that there was no bad intent on the part of Mr B, the registered keeper of the vehicle shown on the V5 was not Mr B and, had Soteria known that the registered keeper of the vehicle was Mr B’s father in law at the outset, it wouldn’t have

provided cover. So the investigator agreed there had been a qualifying misrepresentation but didn't think this was deliberate or reckless and agreed with Soteria that it was careless. He agreed that Soteria was entitled to void Mr B's policy and decline his claim but that it should refund the premium he'd paid from renewal, which it had done. In his view, our investigator also noted that Soteria had now confirmed that the import status of the vehicle wouldn't have voided the policy and would have been accepted under the underwriting criteria.

Mr B disagrees with the investigator and the case has therefore come to me to make a decision. He says that he was transparent in his application, didn't intentionally give incorrect information and provided information about his father in law being the owner. He said that he reasonably misinterpreted what the price comparison site required for the definition of 'registered keeper', which is different to the legal definition which he has set out as being 'the Registered Keeper is different to the owner of a vehicle. The person who is responsible for the vehicle in terms of official communications from the police and the DVLA is known as the registered keeper, but the owner is the person who has paid for the car or was given it as a present.' Mr B says that the insurer informed him that it would not have insured the car as it was an import from South Africa but now says that the import issue is fine, so keeps changing its parameters.

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 Misrepresentation) 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.

Soteria thinks Mr B failed to take reasonable care not to make a misrepresentation when he declared that he was the registered keeper of the vehicle.

I've looked at the information from the price comparison website. The question asked on the online form was 'Are you (or will you be) the registered keeper of this car?' Mr B has selected 'yes'. There is an information box next to this question setting out that 'The registered keeper is the person whose name appears in the car's log book (V5 registration document). The owner of the car and the registered keeper can be different people.'

In response to the question 'Are you (or will you be) the legal owner of the car?' Mr B has selected 'no' and then selected 'Parent' from a dropdown list. The information box next to this question says 'We need to know whether the car belongs to you. If you don't own the car but you're the registered keeper, you should answer 'No' (the owner of the car and the registered keeper can be different people).'

In this case the V5 certificate shows that Mr B's father in law is the registered keeper so when Mr B declared himself as the registered keeper this was incorrect. I've considered

what Mr B has said in relation to reasonably misinterpreting what the price comparison website required for the definition of 'registered keeper' and the fact that he did declare that his father in law was the owner of the vehicle. The information box next to the question clearly sets out that the registered keeper means the person who is named on the V5. I appreciate that Mr B was the main user of the car and that he may have paid for the day to day running of the vehicle. But this alone would not make him the registered keeper, as this would be the person who is registered as the keeper. The only document which shows who is registered as the keeper is the V5 and this is the person to whom official communications are sent about the vehicle. I agree that the owner and the registered keeper can be different people, but Mr B was neither the owner nor the registered keeper of the vehicle in this case. So I'm satisfied that Mr B failed to take reasonable care not to make a misrepresentation when he said he was the registered keeper.

I now have to go on to consider whether Mr B's misrepresentation was a 'qualifying misrepresentation', namely whether it would have made a difference to what Soteria would have done had it known the correct information.

Soteria has provided a copy of its underwriting rules from the time the policy was taken out. This shows that if Mr B had said that the registered keeper was a parent, it would never have offered him cover. The policy would only have been accepted if the registered keeper was the policyholder, a spouse or a civil partner. This means that I'm satisfied that Mr B's misrepresentation was a qualifying one.

Soteria has classed the misrepresentation as careless (as opposed to being deliberate or reckless). I can see that Mr B did say that his father in law was the owner of the vehicle and, as a careless misrepresentation is the most favourable outcome for Mr B, I am satisfied that this is fair. So I agree that it was reasonable of Soteria to conclude that Mr B's misrepresentation was careless.

As I'm satisfied Mr B's misrepresentation should be treated as careless, I've looked at the actions Soteria can take in accordance with CIDRA. As it would not have offered cover but for the misrepresentation, I'm satisfied that it was entitled to avoid Mr B's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, Soteria does not have to deal with his claim following the theft of his vehicle.

Whilst there were also the issues in relation to Mr B's vehicle being a South African import and his motoring conviction from August 2018, I haven't looked into whether these would have been qualifying misrepresentations in any detail. This is because it would not affect the outcome of the complaint given that the policy was voided on the basis of the registered keeper for the reasons set out above. However, for clarification, Soteria has said that the selection made on the price comparison website in relation to the car being an import was probably the best fit so its underwriter may have allowed the policy to continue had this been the only issue.

I know my decision will come as a disappointment to Mr B, but I can't fairly say that Soteria has acted unreasonably in the circumstances of this case and I don't uphold this complaint.

My final decision

For the reasons set out above, I've decided not to uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 June 2021.

Rachel Ellis
Ombudsman