

## **The complaint**

Mr D complains that Ageas Insurance Limited (Ageas) cancelled his car insurance policy.

Mr D was represented in this claim by a family member, who was also a named driver on the policy, but for ease, in this decision I'll refer to their actions/comments as those of Mr D.

## **What happened**

In March 2020 Mr D applied for a car insurance policy with Ageas through a price comparison website.

The Ageas policy was administered by company R. For ease in this decision, where company R was acting on behalf of Ageas, I will refer to its actions as those of Ageas.

Shortly after the policy began Ageas cancelled it. After carrying out checks on the Claims Underwriting Exchange database (CUE) - the central database used by insurers for recording claims information – Ageas identified an undeclared claim from February 2020.

Mr D had previously held car insurance with another provider, company A. In February 2020 he'd contacted company A after his car was damaged when he drove through a flooded area. He'd decided not to claim for the damage, later paying for the repairs himself. But company A had recorded the incident on CUE. Mr D said he was not aware of this.

Mr D contacted company A about this and raised a complaint. He later provided Ageas with a letter showing no money was paid out in relation to the February 2020 incident. But Ageas said it would no longer offer cover to Mr D. Company R was then able to arrange Mr D cover with other providers, but at a much higher cost.

Mr D didn't think this was fair, so he complained to Ageas noting that he never made a claim. But Ageas didn't uphold his complaint.

Mr D then brought his complaint to our service. He said he was unhappy with the cancellation of his existing policy by Ageas and the fact this had led to him having to pay more for his car insurance policy.

Ageas told our service that had it known about this incident when Mr D first applied for the policy, it wouldn't have offered to cover to Mr D which is why the policy was cancelled. It also confirmed that its records show Mr D's policy was cancelled by the insurer (something that would need to be declared in future applications), but it said it couldn't comment on the fact company R had told him the cancellation didn't need to be declared.

After looking into things our investigator didn't uphold Mr D's complaint against Ageas. He thought Mr D had misrepresented his accident history when he took out the policy. He said Ageas had treated this misrepresentation as careless (not deliberate/reckless) but, because it wouldn't have offered Mr D cover, it was fair for Ageas to cancel the policy. He also said it was fair for it to record that it had done so on its systems, but that it should ensure the premium Mr D paid for the period after the policy was cancelled was refunded.

Mr D disagreed with our investigator and so the complaint has been passed to me to consider.

After reviewing the evidence, I felt it was likely I'd reach a different outcome to the investigator. So, I shared my provisional findings with both parties, so they had the opportunity to make any comments or provide further evidence.

### **What I provisionally 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.

I'd like to start by clarifying that in this decision I will only be considering the actions and decisions that Ageas was ultimately responsible for. I appreciate there are a lot of businesses involved in Mr D's complaint overall, but I think it's important to separate out what each business did so that I can fairly decide if Ageas has acted reasonably. I will consider the actions of the other businesses Mr D is unhappy with, including company A, in separate decisions.

I've taken into account the relevant legislation here, which is The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out an insurance policy. If the consumer doesn't take reasonable care, it sets out the remedies available to the insurer. These depend on whether there has been a claim. And the standard of care is that of a reasonable consumer.

CIDRA sets out a number of considerations for deciding whether the consumer took reasonable care, including if the questions asked at application by the insurer were clear and specific.

The remedy available to the insurer under CIDRA depends on whether there was what the Act describes as a qualifying misrepresentation and whether this was deliberate or reckless, or careless. For any misrepresentation to be a qualifying one, as well as showing the consumer failed to take reasonable care, the insurer needs to be able to show it made a difference to the terms on which it would offer the policy or that it wouldn't have offered the policy at all. Where a misrepresentation was careless, for an insurer to cancel the policy, CIDRA says that the insurer must show that but for the misrepresentation/s it would not have offered the policy at all. However, if the insurer would have offered the policy at a higher premium and there hasn't been a claim under the policy in question, the insurer can carry on with the policy and settle any future claims proportionately or cancel it, giving the consumer appropriate notice and returning any unused part of the premium.

I note that the use of the word 'claim' here has caused some confusion. Everyone agrees that Mr D didn't claim for any losses on his policy in February 2020, but the incident was logged on CUE as a 'closed claim withdrawn'. Something company A called a 'notification claim'. I know Mr D is unhappy that any form of incident was ever recorded, and he also doesn't feel this was explained to him by company A – so he didn't know he needed to declare it. So, I can understand why he might feel it's unfair that Ageas has said he failed to take reasonable care not to make a misrepresentation. But concerns about what was recorded have been raised with company A separately. In this decision, I am only considering the actions of Ageas.

Having carefully considered things, I don't think Ageas was reasonable in concluding there was a misrepresentation here – I'll explain why.

Mr D applied for his policy through a price comparison website. As part of his application he was asked:

*'Claims*

*Have you had any motor accidents, claims or losses in the past 5 years, no matter who was at fault or if a claim was made?'*

In response to this question, Mr D declared some previous claims, but he did not declare the incident in February 2020 – which Ageas said meant he failed to take reasonable care not to make a misrepresentation.

Mr D didn't make a claim, but the question here also asks about '*motor accidents... or losses*'. So, I've considered whether a reasonable consumer would have known to declare this flood damage as an accident or loss.

Mr D has said this wasn't an accident. And I can see why a reasonable consumer might not have considered the incident an accident given it didn't involve the sort of physical impact to his vehicle commonly associated with an accident.

Mr D hasn't commented specifically on the term loss. He has just said he didn't realise the flood damage needed to be declared here. It's of relevance Mr D didn't lose his car – the car wasn't written off. And I'd note the question doesn't define the term loss or assist the consumer in understanding what could constitute a 'loss'. Given this, I don't think this question is clear and specific. And I'm just not persuaded a reasonable consumer who'd decided not to claim but had paid to have their vehicle fixed in circumstances like these would necessarily see this as a 'loss'. So, I don't think Ageas can fairly say that Mr D ought to have declared the February 2020 incident under this question or that he failed to take reasonable care not to make a misrepresentation when he didn't do so.

Given I don't think he failed to take reasonable care not to make a misrepresentation, I'm not persuaded Ageas was entitled to take the action it did in cancelling the policy.

Some time has passed since this cancellation took place and so the policy in question would no longer be active. Given this, I'm not going to ask Ageas to reinstate the policy. To put things right I think Ageas should record the policy as cancelled by Mr D, removing the insurer cancellation from his records. I also think it should provide Mr D with a letter confirming the cancellation wasn't his fault, which he can then provide to other insurers if needed to ensure the premiums he's paid on subsequent policies have been fairly calculated.

If not already refunded, I also think Ageas should waive any set-up or cancellation fees Mr D may have been charged in connection with the policy. I say this noting he barely had use of this policy and I don't think the cancellation was fair.

Having listened to the calls, I'm also aware Mr D raised concerns over the date of cancellation. Ageas gave Mr D advanced warning of the cancellation, with the policy scheduled to end cancelled on 19 March 2020. On 10 March 2020 Mr D phoned Ageas about this and asked for the policy to be cancelled with immediate effect so he didn't have to pay for the extra time on cover. But he was told he'd have to wait. In light of this and the above mistakes, I think Ageas should also refund Mr D for the nine days of extra premiums he had to pay for against his wishes.

Finally, taking everything into account, I also think Ageas should pay Mr D £300 compensation for the distress and inconvenience caused by the unfair cancellation of the policy.

### **Response to my provisional decision**

Mr D thanked me for my provisional decision and said the outcome would assist him. But Mr D continued to raise concerns about the actions of company A. However, as outlined above, in this decision I will only be commenting on the actions and decisions of Ageas.

Ageas didn't agree with the proposed outcome. It didn't think the question it asked was unclear or ambiguous. It raised a number of points about this as follows:

- *'We agree there was no claim made, it appears the customer was not awarded compensation for the vehicle being written off as a total loss, or for any repairs in partial loss*
- *It is clear there was a loss, the misfortune of flood water causing damage to occur to the vehicle*
- *The definition of loss within insurance and recognised across the industry is that loss is usually the basis of a claim for damages, it isn't the act of losing the car, but also the harm, so in this instance the damage caused by the flood water entering it*
- *It seems there may have been the intention to apply for a claim, as a telephone call was prompted to the previous insurer*
- *The damage necessitated repairs at the expense of the customer, that we are led to believe was out of their personal choice*
- *What we cannot be sure of had the customer chosen differently, had they wanted to proceed and submit a claim, how successful a potential claim would have been; we were not party to the conversation that occurred between the previous insurer and the customer, as such we cannot say if the customer had sufficient cover under their previous policy, or if the car was damaged by a loss that they did not cover, so the insurer would not have paid*
- *Similarly, we cannot say if the previous insurer perhaps felt the customer could have prevented the loss*
- *However, what we do know is that when he was presented with the question, the customer did not appear to take reasonable steps to make sure he wasn't making a misrepresentation. I say this because, while the customer we understand thought he was answering the question honestly regards a claim, it's more likely the customer didn't read or understand the question properly, and therefore they should have checked*
- *We do not agree it's of relevance that the customer didn't lose his car, this is not the sole definition of loss, certainly not within the insurance industry*
- *While the question doesn't define the term loss, given that the customer and or their representative had acted to telephone their previous insurer to discuss the impact of the flood, this indicates they were making an enquiry about the loss, so while I agree the customer decided not to claim, but instead paid to have their vehicle fixed, I do not agree they would not necessarily see this as a 'loss'.*

### **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.

I've carefully considered the comments made by both parties, but I'm not persuaded to depart from my provisional findings - I'll explain why.

Firstly, I'd like to be clear that I don't think it matters what might have happened had Mr D pursued a claim with his previous insurer, he didn't. And so, I don't think he needed to answer the question 'yes' and declare a claim here.

It's clear Mr D looked into whether he could claim on the policy. But no one is questioning that Mr D was aware of the incident and the damage caused. I think the crux of this complaint is about whether Mr D understood this to be a 'loss'. I say this because he didn't make a claim, no-one is suggesting it was a motor accident, and the question only asked about these two things and losses. I don't think calling to find out if something is covered under a policy automatically demonstrates that a consumer considers this damage to be a 'loss'. To use another example as an illustration, I don't think a reasonable consumer would consider a scratch to their paintwork a loss, but they might call their insurer to find out if the damage is covered by their policy.

I appreciate that the insurance definition of loss, as outlined by Ageas, covers what happened to Mr D's vehicle – Mr D's vehicle was damaged and he had to fix this at a cost in order to continue using the vehicle (this financial cost is considered a 'loss' by Ageas). But CIDRA requires me to consider whether a reasonable consumer, reading this question, would understand what happened to Mr D's vehicle as a 'loss' as per the question asked.

The term 'loss' is commonly used to refer to situations where something is no longer there. And I'm not persuaded that a reasonable consumer would think this covered any sort of damage or harm to the vehicle that could be claimed for even when it wasn't. This isn't explained in the question and it isn't the common understanding of the term. I'd also observe that if this is what Ageas was seeking to know about then it could have asked about 'damage' or 'harm', but it did not.

And I'm also not persuaded that a reasonable consumer would understand loss to mean any sort of damage that costs money to fix. I'd note that the question didn't specifically ask about financial loss or costs incurred, which may have prompted Mr D to consider the question differently. Instead it asked about '*motor accidents, claims or losses*' and, as I observed in my provisional decision, Mr D didn't lose his motor vehicle.

So, I don't think Ageas has made clear in this question that it is seeking to know about costs incurred connected with damage or harm to the vehicle.

I don't doubt it was Ageas' intention to gather information about this sort of incident when it asked the question it did. But, for all of the reasons I've outlined above, I'm of the opinion the question asked wasn't sufficiently clear. And taking everything into account, I therefore don't think Ageas can fairly say that Mr D failed to take reasonable care not to make a misrepresentation when he answered this 'no'.

### **My final decision**

For the reasons outlined above, my final decision is that I uphold this complaint. I direct Ageas Insurance Limited to:

- Record Mr D's policy as cancelled by him.
- Provide Mr D with a letter confirming the cancellation of his policy was not his fault.
- Refund any set-up or cancellations fees Mr D may have paid for the policy, if not already refunded.
- Refund nine days of premiums.
- Pay Mr D £300 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or

reject my decision before 11 March 2022.

Jade Cunningham  
**Ombudsman**