

The complaint

Miss H complains about One Insurance Limited ('One'). Her complaint is about One's decision to cancel her motor insurance policy.

What happened

Miss H had a motor insurance policy with One. In July 2021 she received an email from One telling her that they had cancelled her policy. Not understanding why her policy had been cancelled, Miss H contacted One, who initially said it was because the vehicle she'd insured wasn't registered in her name. Miss H challenged this as she had the registration document for her vehicle that was in her name. One then said the cancellation was because her vehicle had previously been declared a write off, but she hadn't told them of this when she took out her policy. Therefore, she'd made a misrepresentation and as such they were entitled to avoid her policy (that is, cancel it as if it had never been taken out).

At the time of the cancellation of her policy Miss H had an ongoing claim under her policy from an accident in June 2021 (which she believed wasn't her fault). As well as cancelling her policy, One also told Miss H that they wouldn't accept her claim. Miss H told One that she bought the vehicle privately in 2018 and had no knowledge of it previously being a write off. She also said that this hadn't been raised as an issue when she had previously insured the vehicle with two other insurers.

Unhappy at having her policy cancelled and her claim declined, Miss H complained to One. One didn't uphold her complaint. In their final response, One said that when asked to confirm details prior to payment when taking out the policy, Miss H would have been made aware that her vehicle must not be a registered write off. Also, the policy documentation subsequently sent to Miss H asked her to review the information to ensure it was correct, and that incorrect information may mean no cover is provided and claims may be declined. One confirmed their view that they considered Miss H not telling them about her vehicle being a write off to be a careless misrepresentation. Had they known this when she took out her policy they would not have offered cover. Based on this they were entitled to avoid her policy (but return the premiums) and decline her claim.

Unhappy at One's rejection of her complaint, Miss H complained to this service. She thought One should have identified her vehicle as being previously written off when she took out her policy (given that she wasn't aware when she bought the vehicle). She wanted One to apologise for cancelling her policy and for the stress that this had caused her. She also wanted One to reinstate her policy and accept her claim.

Our investigator considered the complaint and concluded that One hadn't acted fairly in avoiding Miss H's policy and declining her claim. The investigator, firstly, didn't think that Miss H had been asked a clear and specific question about whether her vehicle had previously been written off. The investigator also didn't think that (as One argued) being asked to confirm that her vehicle wasn't previously a write off was sufficiently clear (nor this being mentioned in the subsequent policy documentation). The investigator, secondly, thought it reasonable that Miss H wouldn't have understood (from the description of her vehicle on the registration document) that it had previously been a write off. Therefore, she'd

taken reasonable care in answering the questions when she took out her policy and hadn't made a misrepresentation.

To put things right, the investigator thought that One should reinstate her policy and consider her claim in line with the remaining terms of the policy. The investigator also thought One should pay Miss H £100 compensation for distress and inconvenience.

One disagreed with the investigator's view and requested an ombudsman review the complaint. They thought they'd acted correctly to cancel Miss H's policy, as she had been asked a clear question when she took out her policy about whether her vehicle had previously been written off. They added that the policy documentation subsequently sent to Miss H made it clear that if her vehicle had previously been written off, she would need to tell them as it may affect her policy.

In my findings, I disagreed with the investigator's view. I concluded that the evidence indicated that One would not, under its own underwriting guidelines, have offered Miss H cover for her vehicle had they known that it had previously been written off. As such I was satisfied that this would have been a qualifying misrepresentation under The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA).

I also considered whether Miss H should reasonably have been aware that her vehicle had previously been written off. I concluded that she should, based on information in the vehicle registration document. I also thought it reasonable to expect Miss H to have carried out a check on the vehicle's history that might have revealed more about it, including whether it had been previously written off. Overall, I concluded Miss H hadn't taken reasonable care to check the vehicle's history and so she made a careless misrepresentation.

I also considered whether, having concluded Miss H should have been reasonably aware that the vehicle had previously been written off, she should reasonably have disclosed this to One. I concluded from the evidence about what she was asked when she took out her policy that she should.

As I was satisfied Miss H's misrepresentation should be treated as careless, I then considered whether One acted fairly in accordance with CIDRA. CIDRA states that when there's a careless misrepresentation the insurer may still avoid the policy where they wouldn't have offered the cover at all, but they should refund the insurance premiums for the relevant period of the cover. As this is what One did when they cancelled Miss H's policy, I concluded they acted fairly and reasonably in cancelling her policy (and declining her claim) while returning her premiums.

Because I disagreed with the investigator's view, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of her complaint.

The key issue in Miss H's complaint is whether One acted fairly in cancelling her policy and declining her claim. There are two elements to this issue. First, whether Miss H was asked a clear question about whether her vehicle had previously been written off (and that it was clear that she should tell One if this was the case). Second, whether it was reasonable for Miss H to have been aware that her vehicle had previously been written off.

Looking at the second element first, Miss H says that she didn't realise that the vehicle had previously been the subject of a write off, and that this hadn't been an issue when she'd previously insured the vehicle with two other insurers. One maintain that Miss H should have told them that her vehicle had been the subject of a write off when she took out the policy, and that had she done so they wouldn't have offered to cover her vehicle. As such, she'd made a misrepresentation when she took out the policy. One considered this to be a careless misrepresentation and, as such, they were entitled to cancel the policy from the date it was taken out. This also meant they were entitled to decline her claim.

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.

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.

I've seen the evidence that One would not, under its own underwriting guidelines, have offered Miss H cover for her vehicle had they known that it had previously been written off. That means I'm satisfied this would have been a qualifying misrepresentation under CIDRA.

As I'm satisfied that the misrepresentation was a qualifying one, the key issue is whether Miss H took reasonable care when she took out her policy in answering the questions and providing accurate and complete information [about whether her vehicle had previously been written off]. 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.

One thinks Miss H failed to take reasonable care when she failed to notify them of her vehicle previously being written off. From what I've seen, it isn't in doubt that the vehicle was previously written off. One have provided details from the insurance industry database of claims, but the principal evidence that Miss H would have had on this point is the registration document for her vehicle. I've looked at the document and at the bottom of the first page of the document there's a section headed "Special notes (these cannot be removed)". Underneath this heading there's the following text:

"NO OF FORMER KEEPERS 5

- 1. DECLARED NEW AT FIRST REGISTRATION*
- 2. THIS VEHICLE HAS BEEN SALVAGED BECAUSE THE ESTIMATED COST OF COMMERCIAL REPAIR WAS MORE THAN THE VALUE OF THE VEHICLE."*

The first two lines are standard. But the second reference is relevant, as it means that the vehicle was previously written off, because the estimated [commercial] cost of repair was more than the value of the vehicle.

As Miss H had the registration document the key question is whether she should have noticed the additional reference and understood that it meant her vehicle had previously been a write off. I've thought very carefully about this, and whether a 'reasonable consumer' should have understood it to mean that a vehicle had previously been written off. On balance, I think a reasonable consumer should have noticed the reference and understood that it meant that the vehicle had previously been written off.

Miss H also says that she bought the vehicle privately and had an engineer look it over and no issues were found. I accept that this may have been the case, but I've also considered whether Miss H carried out any other check on the vehicle's history that might have revealed more about it, including such things as whether it had been previously written off, or that it was the subject of outstanding finance etc. In terms of reasonable care, our approach is that as a minimum a consumer should demonstrate that they carried out some form of check on the vehicle. I'm not aware that Miss H carried out such a check. Together with my conclusion that the reference on the vehicle registration document should have indicated that the vehicle had previously been written off, I don't think Miss H took reasonable care to check the vehicle's history. So I've concluded that she made a careless misrepresentation.

Miss H also says that One should have identified her vehicle as being previously written off when she took out her policy. However, I don't agree as the onus is on the consumer to provide accurate and complete information when taking out a policy.

I've then turned to the first of the two elements, whether Miss H was asked a clear question about whether her vehicle had previously been written off (and that it was clear that she should tell One if this was the case). One's argument is that Miss H would, as part of her online journey when she took out the policy, have been presented with a list of assumptions. One provided a screenshot of what this would have looked like. It's headed "It is important that you are aware of the following:" and the first of the points is listed as:

"Your vehicle must not be registered a write off"

The consumer then has to click a box at the foot of the list, labelled "Confirm & Continue", in order to progress further. While this isn't a specific question to which a specific [yes/no] answer is given, it does ask the consumer to specifically confirm the list of points (including that the vehicle isn't registered as a write off). One have also said that their new business letter includes a reference that:

"Please note if your vehicle has previously been written off or deemed beyond economical repair you will need to inform us as this may affect your policy."

While this reference isn't particularly prominent, and doesn't indicate clearly that the policy wouldn't be valid, I think it does (alongside the list of issues that the consumer is asked to confirm) in combination indicate that Miss H should have been aware of the need to tell One about a vehicle previously being the subject of a write off.

Taking the two elements together, then I've concluded that Miss H didn't take reasonable care to establish that her vehicle had previously been a write off and that she should have been aware of the need to tell One about the vehicle having previously being a write off.

As I'm satisfied Miss H's misrepresentation should be treated as careless, and that as One wouldn't have offered cover had it known that her vehicle had previously been written off, then I've considered whether One acted fairly in accordance with CIDRA. CIDRA states that when there's a careless misrepresentation the insurer may still avoid the policy where it wouldn't have offered the cover at all, but it should refund the insurance premiums for the relevant period of the cover. This is what One did when they cancelled Miss H's policy, so I've concluded they've acted fairly and reasonably in cancelling her policy (and declining her claim) while returning her premiums.

my provisional decision

For the reasons set out above, it's my provisional decision not to uphold Miss H's complaint.

Neither Miss H nor One responded by the date requested

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.

Having done so I remain of the view that the complaint shouldn't be upheld.

As neither Miss H nor One responded by the date requested, I haven't changed my view not to uphold Miss H's complaint. So, my final decision and reasoning remains the same as in my provisional decision.

My final decision

For the reasons set out above, it's my final decision not to uphold Miss H's complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 4 March 2022.

Paul King
Ombudsman