

The complaint

Mr J is complaining Sabre Insurance Company Limited has charged him an additional premium after cancelling his car insurance policy.

What happened

In May 2019 Mr J took out a car insurance policy through a broker to insure him and his daughter. The policy was provided by Sabre. The policy renewed in May 2020.

Unfortunately, after the renewal, his daughter was involved in a minor accident with a third party. The third party claimed for the damage to their car on Mr J's car insurance policy. Sabre settled the third party's claim, but it said Mr J had misrepresented his daughter's circumstances when he took out the policy. He'd said his daughter had a provisional licence and was a full-time student. However, she had a full driving licence and also a second occupation as a sales assistant. It said it would have charged around £5,800 extra over the two policies had it known his daughter's true circumstances. So it said he needed to pay this.

Mr J didn't think this was fair. Sabre said it would cancel the insurance policy if he didn't pay this. Mr J didn't do so, so Sabre cancelled the policy. It said he still owed around £300 on the original premium, so it said he owed around £6,100.

I issued a provisional decision in December 2021 upholding this complaint and I said the following:

"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. 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it's entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

Sabre set out the information it required in its statement of fact. In this, it asked what type of licence Mr J and his daughter had. It also asked whether either of them had an additional occupation. There's no dispute Sabre was incorrectly told Mr J's daughter had a provisional

licence, when she actually had a full licence. Further to this, it's also not disputed she had a secondary occupation, but Sabre was told she didn't have one.

Mr J took this policy out through a broker. It was the broker's responsibility to provide the information on Mr J's behalf. So it needed to ask clear questions to ensure it presented the correct information to the insurer. If Mr J doesn't think the broker did so, he'll need to raise this with the broker directly.

Sabre has shown it would have charged an increased premium had it known the true situation. So I'm satisfied there's a qualifying misrepresentation. I've now thought about what remedies were available to Sabre.

I don't think Mr J did this deliberately – I think this was a simple mistake. But CIDRA would consider this misrepresentation to be careless. Sabre has said the same. As I said above, CIDRA sets out the remedies available to Sabre in these circumstances. Where a misrepresentation is found to be careless, in summary, it allows insurers to do the following:

- If it would not have provided the insurance policy on any terms, the insurer may avoid the contract and refuse all claims, but it must return the premiums paid.
- If the insurer would have provided the insurance policy, but on different terms, it can in effect amend the terms of the contract to reflect what the contract would have said.
- In addition, if the insurer would have provided the insurance policy, but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.
- It can cancel the contract of insurance.

The key point here is that CIDRA doesn't say the insurer can charge an additional premium. So in requiring Mr J to pay an additional premium, Sabre acted outside of its rights under CIDRA. That said, there are circumstances where it may be fair for an insurer to give a consumer an option to pay the additional premium. But it can't insist that they do so. So I don't think Sabre has treated Mr J fairly in insisting he pay the additional premium. However, I've also thought about whether Mr J has lost out as a result of this.

Mr J has entered into two separate insurance contracts in this case – an initial contract when he first took out the insurance policy and a second contract when the policy renewed. There was a qualifying misrepresentation at the start of each contract. I've set out why I think that was the case when Mr J first applied for the policy. When the policy renewed, Mr J was asked to check the information Sabre held was correct and let it know if any of the information was incorrect, but he didn't do so.

I've considered the remedies available to Sabre for each contract. The first contract continued to the end with no claims made. So Sabre hasn't paid out anything under the policy. Sabre believes it's entitled to charge the additional premium to reflect what Mr J would have paid if it had the correct information. But, as I said, CIDRA doesn't give this as a remedy available. So I don't think it was fair for it to say Mr J needed to pay an additional premium for this policy.

Regarding the renewed policy, Sabre settled a third party's claim. Sabre has said, it was entitled to reduce this claim proportionately, but I disagree. CIDRA says "the insurer may reduce proportionately the amount to be paid on a claim." It doesn't specify that this only applies to specific sections of a policy.

I think it would be useful to explain under what capacity Sabre was required to settle the third party's claim. The terms of the policy say Sabre may cover Mr J's liability for any liability he,

or anyone insured under the policy, may have towards a third party. The key point here is that it is still Mr J claiming here. CIDRA sets out that Sabre could proportionately reduce the amount Sabre's required to pay of Mr J's potential liability to the third party – i.e. it wasn't required to cover the full liability. That said, I recognise there are certain other legal responsibilities (such as its responsibilities under the Road Traffic Act) that may have required Sabre to settle the claim in full. However, the terms of Mr J's policy also set out Sabre could recover the extra it paid the third party. So I'm satisfied Sabre was entitled to either decide to only pay a proportion of the third party's claim and leave the third party to pursue Mr J directly or to recover the extra it paid directly from Mr J had it chosen to do so.

However, in some circumstances, it may be fairer for an insurer to charge an additional premium rather than reduce the value of the claim – as Sabre did here. But this would be at the insurer's discretion and shouldn't put Mr J in a worse position.

In this case, Sabre has said the additional premium it's requiring Mr J to pay for the renewed policy is around £1,600. However, it only paid out around £800 to the third party. So, had it proportionately reduced its liability in line with its rights under CIDRA, it seems to me Mr J would have owed around £481 (I think Mr J had paid around 41% of the total premium payable). So I do think Mr J has lost out here and I think he should only have to pay Sabre £481.

However, CIDRA also entitled Sabre to cancel the insurance policy. Sabre gave Mr J option to pay an additional premium to enable him to continue with the policy, which I think was fair. However, it shouldn't have required him to pay £5,800, but the additional premium payable on the renewed policy – i.e. around £1,600. However, I'm not persuaded Mr J would have been willing to pay this either to keep the policy continuing. So I think the policy was always going to be cancelled.

Given Sabre settled a claim on the policy, the terms of the policy set out that the full annual premium is payable, even though the policy didn't go full term. This is a standard term in most annual insurance policies and it's not unfair they say this. So it was fair for Sabre to say Mr J needed to pay the remaining amount he owed towards the annual premium, which I understand was around £305.67. Given this, I think Sabre should reduce the amount Mr J owes to £782.

However, I think this matter has caused Mr J a lot of distress and inconvenience. I can imagine it must have been distressing to be told he had to suddenly pay over £6,000. That said, Mr J does have to accept some responsibility for what's happened here as it was ultimately his initial mistake in providing incorrect information that has resulted in the situation he's found himself in. But, I do think Sabre could have minimised this impact had it acted fairly in line with what I've set out above. So I think it should pay him £150 in compensation."

Sabre accepted my provisional. But J acknowledged he'd received the decision but said he didn't have anything further to add.

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.

As neither party has given me anything further to think about, I see no reason to reach a different conclusion to the one I reached in my provisional decision. So I uphold this complaint for the reasons I set out in my provisional decision.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and require Sabre Insurance Company Limited to do the following:

1. Reduce the amount it's requiring Mr J to pay for the misrepresentation to £782*; and
2. Pay Mr J £150 in compensation.

Sabre can offset the compensation it owes Mr J against the amount he owes if it chooses to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 11 March 2022.

Guy Mitchell

Ombudsman