

The complaint

Mr C has complained that West Bay Insurance Plc trading as Zenith Insurance (Zenith) have avoided (treated it as if it had never existed) his van insurance policy and declined his claim following the theft of his van because of this.

What happened

Mr C's van was stolen in December 2021. He put in a claim straight away and was asked to provide various details and documents. He chased Zenith on the progress and he's said he was given the impression the claim would be paid. However, Zenith eventually told him they had avoided his policy because he'd said he was the registered keeper of the insured van when the V5 showed it was actually his father.

Mr C complained to Zenith about how they'd handled the claim, their decision to avoid his policy and the fact they'd put a fraud marker against his name. They accepted their communication on his claim could have been better and paid Mr C £150 compensation for the distress and inconvenience he'd experienced because of their poor communication. However, they said they were entitled to avoid his policy and refuse his claim.

Mr C asked us to consider his complaint. One of our investigators did this. She didn't think it should be upheld and wrote to Mr C to explain this. She said that Zenith were entitled to avoid his policy because if he'd answered the question about the registered keeper of his van correctly they wouldn't have insured him.

Mr C has asked for an ombudsman's decision. He's said he feels he has been honest and his policy should not have been cancelled.

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 Representations) 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 they 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.

Zenith think Mr C failed to take reasonable care not to make a misrepresentation when he took out his policy. This is because he said he was the owner and registered keeper of the van he insured and he wasn't.

Mr C took out his policy via a comparison site through an insurance broker. I've looked at the statement of fact provided by Zenith and I'm satisfied this shows the answers to the questions Mr C was asked when he took out the policy. I can see he answered 'yes' to the question asking if he was the owner of the van he was insuring and 'yes' to the question asking whether he was the registered keeper. I've also seen an entry on Zenith's system notes which says they listened to a recording of Mr C's telephone call with the broker when they spoke to him to validate the policy. And he said 'yes' when he was asked if he was the registered keeper, owner and main user of the vehicle. And Mr C hasn't disputed the fact that he provided these answers.

Mr C has said that he was the owner because he used the van, had it serviced and MOT'd it. Mr C has explained that his father bought the van for him in 2016 whilst he was on holiday, because he wasn't able to get finance for it at the time. And I think if Mr C did use the van exclusively, have it serviced and MOT'd, then it could be argued he was the owner, even if his father did pay for it. However, he clearly wasn't the registered keeper, because the registration document shows this was his father. Mr C has said this was because his father bought the van. And Mr C didn't see anything wrong with insuring it in his name. But, Mr C was asked a clear question on whether he was the registered keeper and he answered this 'yes', when he knew he was not the registered keeper. And I think in giving this answer he did fail to take reasonable care not to make a misrepresentation.

This means provided Zenith can show they wouldn't have offered Mr C the policy if he'd correctly stated he wasn't the registered keeper, they will have shown Mr C's misrepresentation was a qualifying one. And that they were entitled to avoid his policy and refuse his claim, irrespective of whether the misrepresentation was reckless or deliberate or careless.

Zenith have provided a screen shot to show that their application system would have declined Mr C's application in August 2021 if he had answered the question asking whether he was the registered keeper correctly, that is 'no'. Because of this, I'm satisfied Zenith wouldn't have offered Mr C the policy if he'd answered this question correctly. And this means I think they were entitled to avoid his policy. This means the policy – in effect – never existed and Zenith were also entitled to reject Mr C's claim.

I can see Zenith did take too long to provide a decision on Mr C's claim and their communication was confused at times and generally quite poor. But I'm satisfied the £150 they've paid is sufficient compensation for the distress and inconvenience Mr C experienced as a result of this.

I'm also satisfied Zenith were entitled to note the avoidance of Mr C's policy on a fraud database. This is because he provided the wrong answer to a very clear question. And, while I appreciate Mr C feels this was justified, what he said simply wasn't true.

In view of what I've said, it follows that I do not think it's appropriate for me to uphold Mr C's complaint.

My final decision

For the reasons set out above, my final decision is that I don't uphold Mr C's complaint about West Bay Insurance Plc trading as Zenith Insurance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 June 2022.

Robert Short
Ombudsman