

## **The complaint**

Mrs M and Mr P complain about Ageas Insurance Limited (Ageas) who has avoided their cover (treated it as though it never existed) and by doing so, declined their claim made to it following a theft.

## **What happened**

Mrs M and Mr P obtained contents cover from Ageas. Following a break-in at their home, they made a claim. Mr P spoke to Ageas who asked him if he had any outstanding County Court Judgements (CCJ), to which Mr P said he wasn't aware of any. Mr P further explained that checking his credit file wouldn't have been uppermost in his mind, as over the last two years, he had been unwell and stopped work as a result.

Ageas later declined the claim as it said that Mrs M and Mr P, didn't declare that Mr P had a CCJ at the inception of the policy. Mr P raised a complaint to Ageas as he said he wasn't aware of any CCJ.

In its final response, Ageas said that when the policy was taken out online, a series of questions were asked. One of the questions asked if any of the policy holders on the form had any CCJ (amongst other financial restraints) recorded against them. To which, Mr P effectively answered no. When the claim was made, Ageas carried out certain checks and found that Mr P had a CCJ recorded against him. So, it said that it had no choice but to void the policy. As it explained that it wouldn't have offered cover, had the CCJ been declared. It said the claim would remain declined, as it believed that Mrs M and Mrs P had been reckless in the misrepresentation of the information they gave.

Mrs M and Mr P were given their referral rights and referred a complaint to our service. One of our investigators considered the complaint and thought it should be upheld. In short, she agreed there had been a qualifying misrepresentation. But didn't think this was deliberate or reckless. She believed that it was a careless misrepresentation and thought that Ageas were entitled to void the policy. She also concluded that Ageas should refund Mrs M and Mr P's premium from inception to the date of void.

Ageas accepted the view, Mrs M and Mr P did not. They said that they were unaware of the CCJ. It wasn't fair that Ageas wanted customers to check their credit files. And Ageas had placed a fraud marker on Mr P's file. So, they asked for a decision from an ombudsman.

## **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 will uphold this complaint. But for much the same reasons as our investigator, which I can understand is likely to be a disappointment to Mrs M and Mr P. But I hope my findings go some way in explaining why I've reached this decision.

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 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.

Ageas thinks Mrs M and Mr P failed to take reasonable care not to make a misrepresentation when they completed the online application, by indicating that Mr P had no CCJ's recorded against him. And for this, it classed the misrepresentation as reckless.

Mrs M and Mr P were asked several questions when they completed the application online. One of the questions asked was as follows: '*Nobody that will be insured on the policy has ever been declared bankrupt, served with any County Court Judgements (CCJ's), Individual Voluntary Arrangement (IVA's) or arrangements with creditors?*'. To which Mrs M and Mr P answered, '*This is true*'.

Despite this, Mr P said that he didn't know that there was a CCJ recorded against him, not least because of his health issues and having moved a few times, when the CCJ was issued.

Although Mr P said he wasn't aware of the CCJ, which I find credible, consumers still have a duty to take reasonable care when answering questions posed by insurers. In other words, Mrs M and Mr P had to take steps to ensure that the answers they gave were accurate. And on this point, given that Mr P was aware that he had had debts, I think it would've been reasonable for him to check the possibility of having a CCJ recorded against him, which he didn't do.

Ageas has provided me with its underwriting criteria to show that had Mrs M and Mr P disclosed the CCJ, it would never have offered them any cover at all. So, applying CIDRA, I'm satisfied that Mrs M and Mr P's misrepresentation was a qualifying one.

Ageas has classed Mrs M and Mr P's misrepresentation as reckless, but having considered all the evidence, I don't agree, and I'll explain why.

I accept that at the time the application was completed, Mr P was suffering from extremely difficult personal circumstances. Yet, I am satisfied that Ageas did ask a clear question regarding CCJs. And under the guidelines, it's for consumers to ensure that they don't misrepresent themselves, which is standard practice for all insurers. But Mr P explained that had he been aware of the CCJ, he would've disclosed it and I haven't seen any evidence to dissuade me from this. Consequently, I think that Mr P was careless, rather than reckless in his misrepresentation.

I've next looked at the actions Ageas can take in accordance with CIDRA and one of the remedies allows for Ageas to avoid Mrs M and Mr P's policy. Which lets it not have to deal with their claim following the theft. In light of this, as I think that the misrepresentation was careless, Ageas is able to rely on CIDRA to avoid Mrs M and Mr P's policy. Nonetheless, I

think it would be fair and reasonable for Ageas to refund Mrs M and Mr P's premiums, from the date of inception (as Ageas said that it would never have offered cover) to the date the policy was voided.

I understand that Ageas has agreed to do this and has refunded the premiums, which I think is a fair and reasonable outcome to this complaint.

Finally, Mrs M and Mr P said that Ageas had placed a fraud mark on their credit file. Ageas said that no such marker had been placed on their credit file. And having considered the evidence, I can't see any information, that indicates any fraud marker on their file, although there is the CCJ entry. Consequently, I don't agree that there is a fraud mark on their file, so there is nothing further I can ask Ageas to do here.

### **Putting things right**

To put matters right, I direct Ageas Insurance Limited, as outlined below.

### **My final decision**

Ageas Insurance Limited has agreed to refund the premiums from the date of inception to the date the policy was voided. And I think this offer is fair in all the circumstances.

So, my decision is that Ageas Insurance Limited must refund the premiums from the date of inception to the date the policy was voided, within 28 days of the date on which we tell it Mrs M and Mr P accept my final decision. If it pays later than this it must also pay interest from the date of my final decision to the date of payment at 8% a year simple. If it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr P to accept or reject my decision before 18 May 2022.

Ayisha Savage  
**Ombudsman**