

The complaint

Mr J's representative complains on Mr J's behalf that One Insurance Limited (One Insurance) unfairly declined his claim and cancelled his motor insurance policy.

References to Mr J or his representative, will include the other.

There are several parties and representatives of One Insurance involved throughout the claim but for the purposes of this complaint I'm only going to refer to One Insurance.

What happened

Mr J's car rolled from his drive and was involved in an accident with another car. He made a claim on his motor insurance policy with One Insurance.

When One Insurance looked into Mr J's claim it was found that his car had been reported as a write off before his insurance policy had started and he had not informed it of this. One Insurance said it did not offer cover for cars that had been previously written off.

Mr J's representative said Mr J knew the car had accident damage when he bought it, but he didn't know the car had been written off as a total loss. He said Mr J only understood and spoke a limited amount of English. His representative said due to the language barrier he did not understand what 'written off' meant.

As Mr J's representative was not happy with One Insurance, he brought the complaint to our service.

Our investigator upheld the complaint. She looked into the case and said Mr J had taken reasonable care, given what he knew about the car and she didn't think a qualifying misrepresentation had occurred. She said One Insurance should consider Mr J's claim.

As One Insurance is unhappy with our investigator's view the complaint has been brought to me for a final decision to be made.

In my provisional decision I said

Mr J had bought insurance cover on this car since 2014. He has renewed his insurance cover on the same car each year.

Mr J's representative said when buying the car Mr J was aware there was damage sustained to it, but this had been repaired and the car was drivable. He said the seller gave no information that it had been written off.

As Mr J does not speak English fluently a relative had spoken to One Insurance on his behalf when he took out his policy.

One Insurance said Mr J didn't advise them when he took out the motor insurance policy

that the car had been an insurance 'write off', or that he'd done an hire purchase investigation (HPI) check on the vehicle.

One Insurance said it didn't offer cover to previously written off cars and this is stated in its terms and conditions. I checked the terms and conditions and I agree this is correct.

Due to the length of time since 2014 when Mr J started his motor insurance cover on this car, I was unable to listen to the call recording that was made to start the policy.

And so I have reviewed the scripts used by One Insurance agent's and can see it would have asked if the vehicle had "been Q registered or written-off. And if the vehicle is HPI checked."

Mr J's representative said Mr J had not disclosed this information because he didn't know the car had been an insurance 'write off' and he didn't know what an HPI check was until he'd been advised when his claim had been declined. Mr J's representative said One Insurance were advised there was some damage to the car, but nothing is recorded on One Insurance's system.

One Insurance said as Mr J had had multiple insurance proposals since the start of his insurance on this car, he had opportunities to update the details. But as he hadn't changed his car, I think it's reasonable he didn't provide any annual update about it as the car remained the same as when he first insured it.

When reviewing this complaint I've considered the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). It sets out the roles and duties of the consumer and insurer when entering into an insurance contract. CIDRA places the consumer under a duty to take reasonable care not to make a misrepresentation (such as giving untrue or misleading answers). And sets out a number of considerations for deciding whether the consumer failed to take reasonable care.

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 must 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 that a qualifying misrepresentation can be careless, reckless, or deliberate. If a misrepresentation is found, the insurer can take action depending on what it would have done had it not been for the misrepresentation/non- disclosure.

It is not in question Mr J failed to inform One Insurance when he started his policy that his car had been classed as a write off before he bought it. What is in question is was this a 'qualifying misrepresentation'.

From the adviser script I have seen for when Mr J took out his policy with One Insurance, I am satisfied that Mr J would have been asked if his car had been written off. I think this is a clear question and a reasonable consumer would have taken this opportunity to respond that the car had been written off, or that he wasn't sure and would check.

As a consequence, I'm satisfied that Mr J has made a qualifying misrepresentation. And so the next step is for me to determine if that was careless, or deliberate or reckless.

One Insurance said Mr J made a reckless misrepresentation when he failed to disclose the correct details on the application for his motor policy. This means it could avoid the policy, refuse all claims and need not return the premium.

An insurer has to prove that a policyholder has made a reckless misrepresentation. After consideration of everything that's been provided, I haven't seen evidence that indicates Mr J recklessly failed to provide details of the write off. I think due to the language barrier, he may not have been aware of the significance of the question in terms of his insurance policy. I think the misrepresentation was careless.

I've looked at the actions One Insurance can take in accordance with CIDRA. If the misrepresentation is seen as careless, One Insurance can avoid the policy back to its start date. This means his policy can be treated as though it never existed. However, One Insurance would be required by CIDRA to reimburse Mr J for his policy premiums for the avoided period of his policy.

In this case although One Insurance said Mr J made a reckless misrepresentation it did not refuse all claims. It paid for the third-party damage as it said it "was responsible for insuring the vehicle at the time therefore it would be required to pay the third party following the incident."

Therefore, I intend to uphold Mr J's complaint and require One Insurance to accept the misrepresentation as careless. It should reimburse Mr J for his policy premiums for the avoided period of his policy.

Responses to my provisional decision

Mr J's representative responded to say he had no comments.

One Insurance responded to say

- In relation to the point that due to a language barrier, Mr J may not have been aware of the significance of the question in terms of his insurance policy. It said Mr J had resided in the UK for 39 years and has had a full driving licence for 22 years.
- Mr J originally purchased his policy in 2013 for another vehicle. He confirmed he had been involved in an accident in 2008 but failed to disclose he had been involved in an accident in 2011. He was involved in an accident in 2014. He changed his car to the one in this claim in 2015.
- Due to Mr J being involved in numerous accidents and because he has raised claims through insurance policies in the past, he would be familiar with what "write off" in insurance terms meant. And would have been able to answer the proposed question correctly.

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.

In response to One Insurance's comments

- I accept that Mr J has been resident in the UK for many years and has driven for over 20 years. However this is not evidence that there is not a language barrier.
- I am not persuaded that because Mr J has been involved in other accidents and has made claims through his insurance previously, that this confirms there was no chance of misunderstanding.
- Mr J was not aware the car had been an insurance write off when he bought it. Therefore even if he was familiar with what "write off" in insurance terms meant he would still have answered the question the same.

Based on the evidence I've reviewed I maintain my provisional decision that the misrepresentation made by Mr J was careless and I uphold his complaint.

My final decision

For the reasons I have given I uphold this complaint.

I require One Insurance Limited to accept the misrepresentation as careless. And to reimburse Mr J for his policy premiums for the avoided period of his policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 7 June 2022.

Sally-Ann Harding
Ombudsman