

The complaint

Mr K complains One Insurance Limited unfairly avoided his motor insurance policy and refused his claim.

What happened

In October 2021 Mr K took out a One Insurance motor insurance policy. He used an online aggregator site. After selecting the quotation he was passed to an intermediary's website to complete the purchase. The intermediary passed on Mr K's application information to One Insurance.

In November 2021 Mr K made a claim on the policy for damage to his vehicle. After investigating the claim One Insurance wrote to Mr K to say it had been given incorrect information when the policy was set up. It said Mr K had failed to disclose the insured vehicle had previously been declared a total loss. One Insurance said if it had been given accurate information it wouldn't have offered cover. It said as a result it would be avoiding his policy (treating it as though it never existed), refusing the claim and retaining the full premium.

Mr K complained to One Insurance about its decision. In December 2021 One Insurance responded. It said its decision to avoid his policy, refuse the claim and retain his premium had been made in line with the relevant legislation. Mr K didn't accept that so came to this service. He would like his claim paid and compensation for the poor service he's received.

Our investigator felt One Insurance's decision that Mr K had made a qualifying misrepresentation was fair. So she didn't recommend it reinstate his policy, pay his claim or do anything differently. Mr K didn't accept that outcome, so the complaint was passed to me.

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 this is an informal service, I haven't responded here to every complaint point or piece of evidence provided. Instead I've focused on what I consider to be the most significant. But I would like to reassure Mr K and One Insurance that I have considered everything provided for the complaint.

An insurer can take certain action, like avoiding a policy, if a 'qualifying misrepresentation' has been made in line with the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

I've first considered if there was a misrepresentation. One Insurance has provided a screenshot of a list of assumptions. It says Mr K was required to confirm these to continue with his application when on the intermediary's website. The first assumption shown is '*Your vehicle must not be registered as a write off*'.

Mr K denies he was presented with the list of assumptions. Instead, he says, there was a pop-up box with the words '*Please click this checkbox to confirm your vehicle is not a total loss*'. He said he had saved searches showing this text, but unfortunately he hasn't been able to provide them.

On balance I think its most likely Mr K was presented with the list of assumptions provided by One Insurance. It also satisfies me the insurer wanted to know about the car's previous write off history when deciding if it would offer cover.

I've seen Mr K's car's V5 registration document. It shows the vehicle was declared as Category S salvage - noting '*This vehicle has been salvaged because of structural damage...*'. Results of an online search, provided by One Insurance, show an accident and loss date for the damage, relevant to the salvage decision, as May 2019 – that's before Mr K took out the policy in 2021.

Mr K's disputed the meaning of the terms 'write off' and 'total loss'. However, typically a vehicle is treated as a write off (also known as a total loss) when an insurer considers the cost to repair it to be higher than its value.

I think its most likely the Category S salvage marker was recorded by the car's insurer, at the time of the May 2019 accident, as it considered it a 'write off' or 'total loss'. So it's reasonable for One Insurance to say there was a misrepresentation when it was confirmed the vehicle wasn't registered as a write off. For the avoidance of doubt I'd likely say the same if 'total loss' had been used instead of 'write off'.

But for One Insurance to take any action, like avoid the policy, there needs to be a 'qualifying misrepresentation'. For that a few things are required. Firstly there must have been a failure to take reasonable care not to make the misrepresentation.

CIDRA sets out a number of things to be considered when deciding if a consumer took reasonable care not to make a misrepresentation. One is how specific and clear was the questions asked. Another is any relevant explanatory material.

I think the assumption itself is clear and specific. As I've said Mr K's made comments on the meanings of 'total loss' and salvage note on the vehicle's V5. But I'm satisfied a reasonable consumer would understand the assumption and what they were being asked to confirm. 'Write off', in the context of vehicles, is a commonly used and understood term.

I think its most likely Mr K was aware the car was registered as a 'write off' when he took out the policy. It was recorded on the front of the car's V5. So he would probably have been made aware when he received that. In a claim call recording One Insurance explains it's discovered the car is recorded as a '*...Cat S write off*'. In response Mr K says '*I'm aware of it...*'. He goes on to explain he had declared that status when taking out the cover. So I think it's fair for One Insurance to say Mr K failed to take reasonable care not to make a misrepresentation when he confirming his car wasn't registered as a write off.

One Insurance also needs to show that without the misrepresentation it wouldn't have offered cover - or would have only done so on different terms. It's provided underwriting criteria. It's also explained what would have happened if it had been told the vehicle had been previously written off. I'm satisfied it wouldn't have offered cover. That means there was a qualifying misrepresentation. It also means One Insurance's decision to avoid the policy and decline the claim was fair and made in line with CIDRA.

Mr K's said his previous insurers weren't concerned about the vehicle's salvage category. I accept that's possible. Insurers have different underwriting and acceptance criteria. However

for this complaint I'm only concerned with One Insurance's. And as I've said it's shown it wouldn't have offered cover if had been told of the write off history of the vehicle.

Where a qualifying misrepresentation is considered deliberate or reckless CIDRA allows the insurer to retain the full premium. As I've set out above, I'm satisfied Mr K was most likely asked to confirm the car wasn't registered as a write off. I think he most likely understood what he was being asked to confirm. Considering his claim call with One Insurance I'm persuaded he was aware, at the point of taking out the cover, that the car was registered as a 'write off'. However, it seems he chose to confirm it wasn't. So I can't say One Insurance's decision that the misrepresentation was deliberate or reckless is unfair or wasn't made in line with CIDRA. That means I'm not going to interfere with its decision to retain the premium.

Mr K's complained about poor service and delay from One Insurance. I haven't seen anything to persuade me it was guilty of either when dealing with the claim and avoidance. So I'm not going to require it to pay Mr K any compensation or do anything differently.

My final decision

For the reasons given above, I don't require One Insurance Limited to reinstate Mr K's policy, reconsider his claim or do anything differently.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 July 2022.

Daniel Martin
Ombudsman