

The complaint

Mr M has complained that Society of Lloyd's trading as Lloyd's of London avoided (treated it as if it never existed) his motor insurance policy and refused to pay his claim.

What happened

Mr M took out a motor insurance policy with Lloyd's through an online price comparison site. When his car was stolen, he tried to claim on his policy.

Lloyd's declined his claim, avoided his policy and kept the premiums he'd already paid. When Mr M complained, it said he'd answered the question he'd been asked about his occupation incorrectly. And that it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid his policy. Lloyd's said it declined the claim because Mr M hadn't taken reasonable care of his car, which was a breach of the policy's terms and conditions.

Mr M brought his complaint to us and our Investigator thought it should be upheld in part. She didn't agree there had been a deliberate qualifying misrepresentation, but that Mr M had answered the question about his occupation as best he could. So she said Lloyd's should remove any records of the avoidance, refund Mr M's premiums pro-rata, refund any cancellation charge and pay him £250 compensation for his trouble and upset. But she thought Mr M hadn't taken reasonable care of his car and this was material to the claim. So she thought Lloyd's was entitled to decline the claim.

Lloyd's doesn't agree with the Investigator and has asked for an Ombudsman's decision. It said Mr M had deliberately not disclosed information about his additional occupations.

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.

I've firstly considered whether it was fair and reasonable for Lloyd's to avoid Mr M's policy because of misrepresentation. 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 (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. 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 is 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.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

Lloyd's thinks Mr M failed to take reasonable care not to make a misrepresentation when he stated in his application via a comparison site that his occupation was as a security officer, but he didn't disclose two directorships he held. It said it wouldn't have offered cover if he had disclosed these.

I've looked at the question Mr M was asked when he completed the application and I don't agree he failed to take reasonable care. This is because I don't think he was asked a clear and specific question that would have led him to disclose the directorships.

Mr M was asked what his employment status was and then what his main occupation was. The customer is prompted to select their employment status and then select their main occupation and what industry they work in. If a customer is unsure of what they need to enter, there are prompts, one of which states:

"please choose the employment status that reflects the majority of the work you do. For example, if you are a house person and have a part time job of 5 hours a week, you should select 'House person/parent' as your primary job."

The customer is then asked if they have any other occupation. But Mr M wasn't provided with any hints or additional information to prompt him to disclose the directorships.

Mr M chose security officer as his main occupation as he worked in this job full-time. And, from what I can see, Mr M answered "No" to other occupations. Lloyd's thinks Mr M should then have disclosed the directorships. But Mr M has explained that he did no work and didn't receive any income from these. So I can understand that Mr M wouldn't regard these as occupations and so I think he answered the question as best he could.

Lloyd's said it thought Mr M had been deliberate or reckless in not disclosing information about his directorships.

For a misrepresentation to be deliberate or reckless, CIDRA says that Lloyd's must be able to show that Mr M knew the information he provided was untrue or misleading or did not care whether it was untrue or misleading; and knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.

I'm not satisfied that Lloyd's has shown that Mr M intentionally withheld information about his directorships to be misleading. Looking at the question Mr M was asked, I don't think he answered it inaccurately and I can't see that he was presented with any questions that would've made him aware that he needed to disclose the directorships as his occupation.

So I'm satisfied that Mr M took reasonable care and didn't make a qualifying misrepresentation when he took out the policy. As such, I don't think Lloyd's was entitled to avoid Mr M's policy and retain the premiums under CIDRA.

And – as CIDRA reflects our long-established approach to misrepresentation cases, I think not allowing Lloyd's to rely on it to avoid Mr M's policy produces the fair and reasonable outcome in this complaint.

I think, to put things right, Lloyd's should remove any records of the avoidance, it should refund Mr M's premium pro-rata from the date of loss, refund any cancellation fee charged, and pay Mr M compensation for his trouble and upset. Our Investigator recommended that Lloyd's should pay Mr M £250 compensation. I think that's fair and reasonable as it's in keeping with our published guidance.

Lloyd's said it had declined Mr M's claim because of a breach of policy terms. It said he hadn't taken reasonable care of his car. Our Investigator has explained our approach where it's alleged that the policyholder hasn't taken reasonable care. We apply a two stage test. Firstly we need to consider whether the condition has been breached. And then, if we think a condition of the policy has been breached, we consider whether this made a material difference to the claim.

I can see that the policy states that the policyholder must take all reasonable steps to protect their vehicle from loss or damage. I think this is a common term in motor insurance policies, and I don't find it unusual or unreasonable. But it is significant, and I would expect it to be set out clearly in the policy wording.

I can see that the term is included in the General Conditions section of the policy on page 20 of the policy booklet. And the consumer is warned that a claim may be declined if the requirement isn't met. So I think it's fair and reasonable for Lloyd's to rely on it to decline a claim.

I've looked at what Mr M told Lloyd's about the circumstances of the theft. Mr M left his car, unattended, in a quiet, poorly lit spot 30 minutes' walk away from his home for five days. During this time the car was stolen. Neither Mr M nor the named driver on the policy attempted to collect the car in this time.

So I can't say that Mr M ensured that his car was kept safe or that he took all reasonable steps to protect it. So I'm satisfied that Mr M breached the policy term. And I think this was material to the claim as the length of time that Mr M's car was left unattended made it more vulnerable to theft.

So I'm satisfied that Lloyd's was entitled to decline the claim because of the breach of a policy term that was material to the claim.

Putting things right

I require Society of Lloyd's trading as Lloyd's of London to do the following:

1. Remove the avoidance from any databases where it's been recorded.
2. Pay Mr M a pro-rata refund in relation to the premium paid. If a cancellation fee was added to the premium Mr M had to pay, this should be refunded.
3. Pay Mr M £250 compensation for the distress and inconvenience caused.

My final decision

For the reasons given above, my final decision is that I uphold this complaint in part. I require Society of Lloyd's trading as Lloyd's of London to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 July 2022.

Phillip Berechree
Ombudsman