

The complaint

Ms B complains that AA Underwriting Insurance Company Limited (AAUICL) avoided (treated it as if it never existed) her motor insurance policy and refused to pay her claim following the theft of her car.

What happened

Ms B renewed her motor insurance policy with AAUICL. When her car was stolen from her driveway she tried to claim on her policy. AAUICL declined her claim, avoided her policy and kept the premiums she'd already paid. When Ms B complained, it said she'd answered the question she'd been asked about previous motoring offences incorrectly. And that it considered this to be a careless qualifying misrepresentation, which entitled it to avoid her policy and refuse her claim. It said it retained the premium for six months due to an open claim.

Ms B brought her complaint to us and our Investigator thought it should be upheld in part. She agreed there had been a qualifying misrepresentation. And she believed it was careless. So she thought AAUICL was entitled to avoid the policy and decline the claim. But she thought it should have refunded the premiums. To put things right, she thought it should now do this, with interest, and pay Ms B £100 compensation for her trouble and upset.

AAUICL doesn't agree with the Investigator. It said it was its policy to retain premiums for six months if there was an open claim.

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 was sorry to hear about the impact AAUICL's decision to avoid the policy has had on Ms B. I can see that this has caused her a significant financial loss.

I'm satisfied that 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.

AAUICL thinks Ms B failed to take reasonable care not to make a misrepresentation when she confirmed in her renewal that she hadn't had any motoring convictions within the previous five years. AAUICL sent Ms B her renewal documents and she was asked to ensure they were accurate.

Under the section *About The Declarations of The Driver(s)* a question asks:

"Have you or any person who will be drive ever been convicted (or have any pending prosecutions) for motoring offences or received any endorsable fixed penalty notices – in the last 5 years?"

I think this was a clear question asked by AAUICL. Ms B answered "No". But she later explained she had forgotten about a SP30 speeding conviction. So I agree she failed to take reasonable care not to make a misrepresentation.

AAUICL has provided evidence from its underwriting guide which shows that if Ms B had not made this misrepresentation it wouldn't have offered cover at all. This means I am satisfied Ms B's misrepresentation was a qualifying one under CIDRA.

I also think Ms B's misrepresentation was a careless misrepresentation. This is because I think Ms B forgot about the conviction and I haven't seen evidence that she didn't disclose it deliberately.

Therefore, I'm satisfied AAUICL was entitled to avoid Ms B's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, AAUICL does not have to deal with her claim following the theft of her car. And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing AAUICL to rely on it to avoid Ms B's policy produces the fair and reasonable outcome in this complaint.

But, as the misrepresentation was careless, AAUICL is required by CIDRA to refund Ms B's premiums. But it declined to do so for six months because it said there was an open claim. We've asked for information about this claim, but it hasn't provided anything further. So I conclude that the open claim refers to Ms B's theft claim. But as the policy was avoided, not cancelled, then the policy terms that allow AAUICL to retain the premium for six months don't apply. And so I think it was wrong for AAUICL to retain them.

AAUICL has now refunded the premiums. But, as Ms B was without her money for some time, I think it should add interest to this amount for the time it wrongly retained them. And I think it should also pay Ms B compensation for the trouble and upset caused. Our Investigator recommended £100 compensation. And I think that's in keeping with our published guidance for the impact of this error.

Putting things right

I require AA Underwriting Insurance Company Limited to do the following:

1. Add interest at the rate of 8% simple per annum to the refund of Ms B's premiums from the date the policy was cancelled to the date they were refunded†.
2. Pay Ms B £100 compensation for the distress and inconvenience caused by it wrongly retaining her premiums.

†If AAUICL considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms B how much it's taken off. It should also give Ms B a tax

deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, my final decision is that I uphold this complaint in part. I require AA Underwriting Insurance Company Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 6 September 2022.

Phillip Berechree
Ombudsman