

The complaint

Miss M has complained that Accredited Insurance (Europe) Limited avoided (treated it as if it never existed) her motor insurance policy and refused to pay her claim.

What happened

Miss M took out a motor insurance policy with Accredited Insurance through a broker. When she was involved in an accident, she tried to claim on her policy.

Accredited Insurance declined her claim, avoided her policy and kept the premiums she'd already paid. When Miss M complained, it said she'd answered the question she'd been asked about the address where her car was mainly kept incorrectly. And that it considered this to be a careless qualifying misrepresentation, which entitled it to avoid her policy, refuse her claim and retain Miss M's premiums.

Miss M brought her complaint to us and our Investigator thought it should be upheld in part. She agreed there had been a qualifying misrepresentation. But as it was careless, she said Accredited Insurance should refund Miss M's premiums.

Accredited Insurance doesn't agree with the Investigator and has asked for an Ombudsman's decision. It said it had retained the premiums to recoup its costs.

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'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 if the insurer wouldn't have provided the insurance on any terms, it may avoid the policy and refuse all claims, but it must return the premiums.

Accredited Insurance thinks Miss M failed to take reasonable care not to make a misrepresentation when she stated in her application that the main garaging address for her car was at her parents' house rather than at her workplace.

And I've looked at the information Miss M provided on the policy's Statement of Fact and I agree she failed to take reasonable care. This is because she was asked to confirm, amongst other things, the postcode where the car was mainly garaged. And I think this was a clear question asked by Accredited Insurance.

Miss M chose her parents' address. And she's explained that this was because she had two addresses, one for work and one for weekends. But Miss M told Accredited Insurance when she notified her claim that the car was kept at her work address from Monday to Friday. So I'm satisfied this was her main garaging address. And I think this means Miss M failed to take reasonable care not to make a misrepresentation when she said the car was mainly kept at her parents' address.

Accredited Insurance has provided evidence from its underwriting guide which shows that if Miss M had not made this misrepresentation it would not have offered her cover at all. This means I am satisfied Miss M's misrepresentation was a qualifying one under CIDRA.

I also think Miss M's misrepresentation was a careless misrepresentation. This is because I think Miss M made an honest mistake, and I can see that Accredited Insurance accepts this.

Therefore, I'm satisfied Accredited Insurance was entitled to avoid Miss M's policy in accordance with CIDRA. And, as this means that – in effect – her policy never existed, Accredited Insurance does not have to deal with her claim following the accident. But, as the misrepresentation was careless, it isn't entitled under CIDRA to retain her premiums.

And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Accredited Insurance to rely on it to avoid Miss M's policy produces the fair and reasonable outcome in this complaint. But I'm also satisfied that it should refund Miss M's premiums.

Putting things right

I require Accredited Insurance (Europe) Limited to refund Miss M's premiums that were retained following the avoidance of her policy.

My final decision

For the reasons given above, my final decision is that I uphold this complaint in part. I require Accredited Insurance (Europe) Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 31 October 2022.

Phillip Berechree
Ombudsman