

The complaint

Mr L complains that Covea Insurance Plc avoided his car insurance policy (that is, treated it like it never existed) and turned down his claim.

What happened

Mr L took out a car insurance policy with Covea through an insurance broker. In December 2020 he called the broker to add his son as a named driver. In March 2022 Mr L's car was involved in an accident while his son was driving and he tried to make a claim. Covea declined the claim and avoided his policy. It said Mr L had answered the question it asked about providing details of any motoring convictions, driving licence endorsements, fixed penalties or disqualifications in the last five years. And Mr L had disclosed none. But when it had checked his son's record, it found that his licence had been endorsed with several convictions, including two periods of disqualification. Covea considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid the policy, decline his claim and keep the premium he'd already paid. Mr L wasn't happy and complained.

Covea didn't uphold Mr L's complaint. But in its response, it said it believed the misrepresentation was careless rather than deliberate or reckless, and it would return his premiums. Covea later clarified that this was a mistake. It believed the misrepresentation was reckless or deliberate but as it had said (in error) that it would return Mr L's premium, it had decided to honour that commitment.

Mr L brought his complaint to this service and our investigator thought it should be upheld. They agreed there had been a qualifying misrepresentation. But didn't think this was deliberate or reckless. They believed it was careless. They said it was fair for Covea not to take action on Mr L's claim as his son was involved in that. But they thought it should remove the avoidance from internal and external databases, amend any records to show that the policy was cancelled by Mr L, provide a letter for him to give to his new insurer to explain the above, compensate him for any rise in premiums caused by the avoidance, and pay him £200 for the trouble and upset caused.

Covea doesn't agree with the investigator and has asked for an ombudsman's decision.

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.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) 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.

If a consumer doesn't 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. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Covea thinks Mr L failed to take reasonable care not to make a misrepresentation when he didn't disclose that his son's licence had been endorsed with several previous motor convictions.

I've thought about whether this was fair. And in doing so I've listened to the call Mr L made to the broker in December 2020. Mr L contacted the broker to ask about adding his son to his policy. During the conversation he was asked if his son had any motoring convictions, fixed driving licence endorsements, any fixed penalties or been disqualified from driving in the last five years. Mr L's answer to this was *"Not as far as I know"*. Mr L thinks the broker should have done more at this point as he believes his answer suggested uncertainty. He thinks the broker should have encouraged him to check the accuracy of his answer or requested further information. Mr L's complaint about the broker has been considered separately and I won't comment on it here.

Having listened to the call, I think it was fair for Covea to say Mr L didn't take reasonable care not to make a misrepresentation. I'm satisfied the question put by the broker was clear. Mr L was required to answer the broker's questions to the best of his knowledge and belief. If he didn't know the answer, I think it was reasonable to expect him to have said this and checked the accuracy of his answer with his son. We know that Mr L's son did have several motoring convictions at that time. So, I don't think Mr L took reasonable care.

Because I don't think Mr L took reasonable care, I now need to look at what Covea would have done if he'd answered its questions correctly and disclosed his son's motoring convictions. Covea has shown us its underwriting guidance on this. It says it wouldn't have offered insurance to Mr L had it known about the convictions his son had endorsed on his licence. And the underwriting criteria supports that.

Since I don't think Mr L took reasonable care when he renewed the policy, and as Covea has shown it wouldn't have offered a policy to Mr L had he disclosed details of his son's motoring convictions, I think Mr L's misrepresentation was a qualifying misrepresentation for the purposes of CIDRA.

So, in line with CIDRA, I now need to look at whether Mr L's misrepresentation was deliberate or reckless, as Covea says it was (although it mistakenly said it was careless). CIDRA says a misrepresentation is deliberate or reckless if the consumer *"knew that it was untrue or misleading, or did not care whether or not it was untrue and 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."*

Mr L says he didn't know his son had motoring convictions when he added his son to the policy in December 2020. He says he didn't think about asking his son about any convictions as he hadn't told him of any. He said that was why he answered the question as *'not as far as I know'*. Mr L also said that when Covea had made him aware of his son's convictions, he asked his son to confirm that information. Mr L said his son confirmed he did have convictions but said his son hadn't said anything to him because he hadn't asked.

Covea said it didn't believe Mr L's misrepresentation was careless as he didn't just forget, he chose not to ask his son the relevant questions. And so, he didn't take reasonable care to

make sure a misrepresentation didn't occur. I don't dispute that Mr L didn't take reasonable care. As I've set out above, I think Covea has shown that Mr L didn't take reasonable care. But, on balance and in light of what Mr L has told us about the convictions, I don't think Covea has shown that Mr L deliberately misrepresented information. And I haven't seen anything to think he didn't care whether the information Covea had was correct. So, I think Mr L's misrepresentation should be treated as careless rather than deliberate or reckless.

CIDRA says that if the misrepresentation was careless, the insurer can only avoid the contract if it wouldn't have offered it on any terms. Covea has shown that it wouldn't have offered insurance to Mr L with his son as a named driver. But it hasn't shown that it wouldn't have continued Mr L's policy had his son not been added to the policy. So, I don't think Covea has acted fairly and reasonably by treating Mr L's policy as if it never existed. Instead, I think it would have been fairer had it amended the policy and removed cover for Mr L's son.

Putting things right

As Mr L's son was driving the car at the time of the accident, I think it was reasonable for Covea not to assess the claim Mr L made. But I think Covea should remove all references to Mr L's policy being avoided from all internal and external databases. Instead, it should amend its records to show the policy was cancelled by Mr L. Covea should also confirm to Mr L in writing what it has done. He can then share that with any new insurers so any impact of the avoidance on his premiums can be taken into account. If Mr L's new insurer is unable to adjust his premiums and can evidence that the avoidance affected them, Covea should compensate Mr L for any amount he's paid due to the avoidance.

Our investigator also suggested that Covea should pay Mr L £200 compensation for the trouble and upset caused. And as this matter has been going on for much longer than it should have done, causing unnecessary distress and inconvenience, I think that amount is fair and reasonable in all the circumstances.

My final decision

For the reasons set out above, I uphold Mr L's complaint and direct Covea Insurance Plc to:

- remove all references to Mr L's policy being avoided from all internal and external databases
- amend all relevant records to show that the policy was cancelled by Mr L
- confirm to Mr L in writing that it has done the above
- compensate Mr L for any extra amount he's paid in premiums solely due to the avoidance – on receipt of evidence that the avoidance affected the premiums, and his new insurer cannot adjust them itself
- pay Mr L £200 compensation for the distress and inconvenience caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 14 February 2023.

Richard Walker
Ombudsman