

## **The complaint**

Mrs R has complained that AA Underwriting Insurance Company Limited (AA UW) have refused to pay her claim under her motor insurance policy following the theft of her vehicle. Mrs R is represented by Mr R.

## **What happened**

Mrs R bought a car in 2019 on finance for about £117,000. Mr R took out a policy on behalf of Mrs R with AA UW through a comparison site in November 2020 to cover her vehicle. From what AA UW have said it seems the comparison site provided a defaulted value of £73,600 for Mrs R's vehicle at the time Mr R did the quote. The Statement of Insurance produced by AA UW showed the 'Car Valuation (inc. accessories)' as £73,600. The Statement of Insurance was provided to Mrs R to check. This said she should ensure the information provided on it was correct. Neither Mr R nor Mrs R contacted AA UW about the value shown.

Mrs R received renewal documents from AA UW prior to the renewal of her policy in November 2021. These included a Statement of Insurance, which again showed the 'Car Valuation' as £73,600. The Statement also said Mrs R needed to check the information on it and let AA UW know if any of it was incorrect. Neither Mr R nor Mrs R contacted AA UW on this occasion either.

Mrs R's vehicle was stolen in March 2022 and she made a claim under her policy. AA UW said she had misrepresented the value of her vehicle when she took out the policy and at renewal in November 2021. As a result of this, they avoided both her policies (treated them as if they never existed) and rejected her claim because of this.

Mrs R complained to AA UW, but they wouldn't change their mind, so she complained to us about their decision.

One of our investigators considered Mrs R's complaint. He said it should be upheld on the basis Mrs R hadn't failed to take reasonable care not to make a misrepresentation when she renewed her policy in November 2021. And he said that this meant AA UW should settle her claim.

This was because he was satisfied Mr R had checked the value of Mrs R's car before renewing her policy and was entitled to think £73,600 was an appropriate market value for it.

AA UW did not agree with our investigator and asked for an ombudsman's decision. They said when Mr R was asked about the value of the car just after it was stolen, he said he thought it was about £90,000. And they think this and the fact that the industry guides used for valuing cars at the time Mrs R renewed her policy showed the market value in November 2021 at between £78,000 and £81,000, proves Mrs R failed to take reasonable care not to make a misrepresentation when she renewed her policy.

I issued a provisional decision on 10 November 2022 and I set out what I'd provisionally decided and why as follows:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*The law I've considered 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.*

*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. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.*

*Under CIDRA, each time a policy is renewed a new consumer contract starts. And this means that in order for AA UW to be able to avoid paying Mrs R's claim, they need to show they were entitled to avoid the policy (consumer contract) she took out at renewal in 2021. If they were also entitled to avoid the policy she took out originally in 2020, they could do this, but it would not have any impact on Mrs R's claim.*

*AA UW thinks Mr R on behalf of Mrs R failed to take reasonable care not to make a misrepresentation when he took out the original policy. But I don't agree that Mr R did do this. This is because he's explained to me that, at the time, he knew that their vehicle would have depreciated a great deal in value since they'd bought it in 2019. And, although he can't recall exactly why he left the value as £73,600 when this came up on the comparison site, he thinks it must have been because he thought it was adequate.*

*So, I think all Mr R did on behalf of Mrs R was provide what would be best described as a statement of opinion, as opposed to a representation, when he left the value as £73,600. By this I mean he just estimated the value was this amount, as opposed to knowing it was as a matter of fact. I appreciate (from my research) the market value (defined in the policy as the cost of replacing the vehicle) was somewhere between £79,000 and £86,000 in November 2020. But – as I've said – it seems Mr R didn't actually check. And I think he was entitled to assume the estimate provided by the comparison site was adequate, considering the vehicle would have depreciated considerably since Mrs R bought it. After all, no-one really knows the cost of replacing a vehicle until they actually have to do it.*

*This means I don't think [AA UW] can rely on CIDRA in relation to the policy Mr R took out for Mrs R in November 2020 due to the lack of a statement by Mr R at this time capable of being a representation. This means it wouldn't produce a fair and reasonable outcome to this complaint if I allowed AA UW to rely on CIDRA to avoid the policy Mrs R took out in 2020. And I think as part of the fair and reasonable outcome to this complaint AA UW should be required to remove any record of the avoidance from their records and any central databases they put it on. If AA UW returned the premium for this policy they will need to agree a way for Mrs R to pay this back. This could be to deduct it from what's due if they pay her claim.*

*I've also considered whether AA UW were entitled to avoid the new policy (consumer contract) Mrs R took out at renewal in November 2021. And I don't think they were. This is because Mr R has provided evidence to show he checked a reputable car valuation guide and it showed the 'Private Price' for their vehicle of between £69,365 and £77,885. He's*

*explained he wasn't surprised by this, as he knew the model of vehicle was one of the fastest depreciating vehicles from new on the market. I've seen a copy of this valuation and the document properties that show it was produced at the start of November 2021. So I'm satisfied it is what Mr R obtained prior to Mrs R renewing her policy. So, whilst the other recognised guides suggest the market value was higher than this in November 2021, these weren't available to Mrs R as a way of checking. And I think Mr R's view that £73,600 was a realistic value was reasonable. Again, I view this as a statement of opinion by Mrs R, or Mr R on her behalf, as neither of them had any idea what it would actually cost to replace the car at the time.*

*I'm not concerned that Mr R said he thought the value of the vehicle was around £90,000 soon after the claim in March 2022. This is because he's explained he'd visited local dealers and established the cost of replacing the vehicle had gone up significantly due to the strong second-hand market.*

*It therefore follows that I don't think Mrs R or Mr R on her behalf made a statement that is capable of being described as a representation, as opposed to a statement of opinion when Mrs R's policy was renewed in November 2021. And this means I don't think AA UW can rely on CIDRA in relation to this contract either. This means it wouldn't produce a fair and reasonable outcome to this complaint if I allowed AA UW to rely on it to avoid the policy Mrs R took out in 2021.*

*This means that AA UW will need to reinstate this policy and consider Mrs R's claim in accordance with its terms. The terms say that the maximum amount payable in the event of a total loss claim is the market value of the insured vehicle at the time of the claim. There isn't a clause in the policy that limits this payment to the value shown in the Statement of Insurance. The policy also says the settlement amount due on any finance agreement for the car will be paid to the finance provider, with the balance being paid to Mrs R. However, the policy excess will need to be deducted if AA UW do decide to pay Mrs R's claim.*

*If AA UW returned the premium for this policy they will need to work out a way for Mrs R to repay this, which could be for them to deduct it from what they pay on the claim, if they agree to settle it. AA UW will also need to remove any record of the avoidance of the policy from their records and any central databases they've placed it on.*

*Our investigator suggested AA UW should pay interest on any amount due to Mrs R. But, I don't think it is appropriate for me to award interest at this stage. This is because I don't actually know what the outcome of Mrs R's claim will be when AA UW have considered it in line with the policy terms. From their claims file it seems likely they will settle it, but I cannot be sure of this.*

*However, I do think Mrs R should receive something for the distress and inconvenience of having her two policies incorrectly avoided. Mr R has explained he and Mrs R couldn't afford to buy another car, as so much of their money was tied up in the insured vehicle. And he's said that in order to get around they borrowed their daughter's car when they were able to do so. And, if they couldn't do this, they used public transport or taxis. This, combined with the upset of having her policies avoided and her claim turned down, would have been very distressing and inconvenient for Mrs R. She also had to carry on paying the finance on her vehicle without actually having it to use, which would also have been very distressing. I appreciate I can't be sure AA UW would have settled Mrs R's claim if they hadn't incorrectly avoided her policies, but what I can be sure of is that the avoidance meant Mrs R couldn't take any action to replace her vehicle, whether this was having had her claim settled or by some other means. Therefore, whilst I don't think what I'd describe as a full payment for loss of use is appropriate, I do think a significant compensation payment for distress and inconvenience is. And, having considered the overall impact of the avoidances on Mrs R,*

*I've provisionally decided £700 is appropriate.*

I gave both parties until 24 November 2022 to provide further comments and evidence.

Mr R on behalf of Mrs R hasn't provided any further comments or evidence.

AA UW have responded with the following further comments:

- They agree the misrepresentation from inception in November 2020 should not be considered in this case as a result of Mr R's reliance on the estimate of the value of Mrs R's vehicle by the aggregator site.
- They maintain their position that Mrs R did fail to take reasonable care not to make a misrepresentation at renewal of her policy in November 2021. They've pointed out that the renewal documents provided to Mrs R asked her to ensure the policy information was accurate and up to date. And they've pointed out Mrs R obtained quotes from the aggregator site in August and October 2021, not long before she renewed the policy. The one in August returned a valuation for her vehicle of £77,950 and the one in October returned one of £81,905.
- AA UW would not have renewed the policy if Mrs R had told them the value of her vehicle was over £75,000.
- It was not reasonable for Mrs R to take a median or lower valuation from a valuation guide obtained at the start of November 2021 to provide an estimated value of the car, especially in light of the information obtained via the quotes she obtained in August and October 2021, which aligned with the higher end of the range of values provided by the guide they'd referred to.
- They do not agree Mrs R didn't make a statement capable of being described as a representation when she renewed her policy in November 2021. And it was unreasonable of Mrs R not to make changes to the renewal details of the policy in light of the information she had obtained in the lead up to renewal. In view of this they consider she made a misrepresentation at this point and they were entitled to rely on CIDRA to avoid her policy on the basis it was a qualifying misrepresentation.

### **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 am pleased that AA UW in effect agrees that there wasn't a qualifying misrepresentation when Mrs R took out her policy in November 2020. And I presume they will remove any record of the policy being avoided from their system and any external database they placed it on. If AA UW returned the premium for this policy they will have to agree with Mrs R how this should be returned to them.

I still do not agree that Mrs R failed to take reasonable care not to make a misrepresentation when she renewed her policy in November 2021. And the fact Mr R on her behalf obtained two quotes which returned valuations for her vehicle at the high end of or above the range provided by the guide Mr R looked at doesn't alter my view in this regard. This is because having seen these values returned and then, having checked the guide a month or so later, I think Mr R on Mrs R's behalf was entitled to assume the amount shown in the renewal notice was around the right figure.

I say this, because it wasn't too much lower than the values returned by the aggregator site and when I spoke to Mr R recently he explained the figures produced by the aggregator sites changed quite a lot, even if the quotations he did weren't done far apart. And I accept neither he nor Mrs R really had any way of knowing the exact value of Mrs R's vehicle at this time.

In addition to this, the valuation shown on the renewal notice was the one produced by the aggregator site the previous year. So, I think it was reasonable for Mr and Mrs R to assume it was OK. Ultimately, any value shown on the renewal documents was an estimate, which Mr and Mrs R couldn't be sure was right and they had to make an assumption. Therefore, I still consider Mrs R provided a statement of opinion on it, as opposed to a statement of fact.

This means I'm satisfied Mrs R didn't fail to take reasonable care not to make a misrepresentation when she renewed her policy in November 2021. In view of this, it remains my view that allowing AA UW's avoidance of Mrs R's policy to stand would not be a fair and reasonable outcome to her complaint.

As it remains my view AA UW shouldn't have avoided Mrs R's policy, it also remains my view that this caused her unnecessary distress and inconvenience. And – for the reasons set out in my provisional decision – I still think AA UW should pay her £700 in compensation for this.

### **Putting things right**

In view of what I've said, I consider the fair and reasonable outcome to Mrs R's complaint is for AA UW to do the following:

- Remove any record of avoiding the policy Mrs R took out in November 2021 from their records and any central databases it was placed on.
- Reinstate the policy Mrs R took out at renewal in November 2022 and consider Mrs R's claim under it for the theft of her vehicle in accordance with the policy terms. The policy terms say that in the event of a total loss AA UW should pay the market value of the insured vehicle less any policy excess. So, while I appreciate AA UW doesn't normally insure cars with a value greater than £75,000, this should not have any impact on the settlement amount due to Mrs R.
- Remove any record of the avoidance of the policy Mrs R took out at renewal in November 2021 from their records and any central databases they placed it on.
- Pay Mrs R £700 in compensation for distress and inconvenience.

Mrs R will need to return any premium refunded to her and AA UW needs to work out the best way for her to do this with her. It could be that it can be deducted from the amount payable in respect of her claim if AA UW decides to settle it.

### **My final decision**

For the reasons set out in my provisional decision and above, my final decision is to uphold Mrs R's complaint and I require AA Underwriting Insurance Company Limited to do what I've set out above in the Putting things right section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 28 December 2022.

Robert Short  
**Ombudsman**