

The complaint

Mr H has complained about his car insurer AA Underwriting Insurance Company Limited (AAU) because it has voided his cover to a date part way through the policy year (meaning it didn't exist after that time) and, by association, declined a claim which occurred after the date the policy was voided to.

What happened

Mr H suffered some ill health. In July 2021 his consultant told him to notify the DVLA of his medical condition and to surrender his driving licence. But the consultant also told Mr H that he may be able to drive again in a year or so if his health improved. Mr H duly sent his licence into the DVLA, but received nothing in return from it.

In late July 2021 Mr H took out a new insurance policy for his car with AAU. He did this on a price comparison site. When answering questions about his licence he said he had a full licence and that he'd notified the DVLA of a medical condition, resulting in a 1 year restricted licence. Mr H's policy with AAU began on 30 July 2021.

In December 2021 Mr H's car was stolen. He made a claim to AAU. AAU, when validating the claim, discovered that Mr H's licence was showing as surrendered as of 19 September 2021. AAU wrote to Mr H. It referenced both the "Insurance Act 2012" and the "Consumer Insurance Act 2012", and policy terms which it felt Mr H had breached. It said all that meant it had the right to declare the policy void from the date the licence was showing as surrendered – 19 September 2021. AAU said that as this meant there wasn't a valid contract of insurance with it when the car was stolen, it wouldn't deal with the claim. It said that Mr H was entitled (presumably due to the voidance) to a refund of his premium. But it also said that because there was an open claim (the December 2021 theft) on the policy, and whilst it was viewing the policy as not having existed since September 2021, the policy terms allowed it to keep any premium paid until the open claim was settled.

Mr H was unhappy with AAU. He said he had completed the on-line detail correctly at the time – the DVLA only updating his licence as surrendered months later. He said he had input on the website that he had told the DVLA of his medical condition and that he had a one-year restricted licence – which he felt was the correct response. When AAU wasn't prepared to change its position, Mr H complained to us.

Our Investigator felt that AAU had acted reasonably. So he didn't uphold the complaint. Mr H was unhappy, so his complaint was passed to me for an Ombudsman's consideration.

I felt that AAU had failed Mr H regarding his premium and the date it voided his cover to. But that the actual decision it had taken to view the cover as void was fair and reasonable – which meant that AAU had no liability for the claim. So I issued a provisional decision to explain my views. My provisional findings were:

"I think AAU could have done a better job of assessing what had happened here, and communicating to Mr H why it felt he had done something wrong, what that meant for his

policy and why that was. I think AAU was very unclear in its communications. It referenced either irrelevant or incorrectly named legislation, and whilst it was seeking to rely on legislation to void the cover, it then sought to rely on policy terms to justify its actions as well. When a policy is voided it's seen as not having ever existed – so it is illogical to rely on policy terms, for example in respect of the premium, when the policy those terms are contained in is void ie not in existence. I think, if AAU had been clearer then Mr H would not have felt so frustrated with it. I'll take that into account when awarding compensation.

The legislation AAU was relying on was the Consumer Insurance (Disclosures and Representations) Act 2012 (CIDRA). This governs the rights and obligations of the contracting parties when arranging and renewing a contract of insurance.

If a prospective policyholder (here that would be Mr H) makes a mistake or fails to answer an insurer's question when applying for a policy of insurance, that is known in the insurance industry as a misrepresentation. CIDRA says that the prospective policyholder, when applying for cover, must take reasonable care not to make any misrepresentation to the insurer. Some misrepresentations that are made will be seen as "qualifying misrepresentations". CIDRA also sets out what an insurer can do if a qualifying misrepresentation is made.

Whether or not a misrepresentation is seen to be a qualifying one depends on two things. First, did the prospective policyholder take reasonable care when they gave the answer they did. Second, can the insurer show that if correct/full detail had been given, it wouldn't have entered into the insurance contract, or it would but only on different terms. What the insurer would have done is often a matter of fact – and I have seen evidenced in that respect here. In short AAU has shown that it is not prepared to offer cover to anyone without a full UK driving licence. And it is clear to me that Mr H, even when applying for the policy, no longer had a full licence because he had surrendered it. So I'll look at whether, when providing the detail he did, whilst completing that application, Mr H took reasonable care. If I find that he didn't then he will be seen to have provided a qualifying misrepresentation. And I'll then look at the remedies available to AAU in that instance.

Whether the prospective policyholder took reasonable care will often depend largely on whether the questions asked by the insurer were clear and/or specific enough to elicit from the reader what it really was the insurer wanted to know. If they were clear but incorrect detail was given anyway, then it's likely reasonable care wasn't taken. In this case Mr H was asked what type of licence he had. I think that was a clear question. And Mr H said he had a full licence. But I think that Mr H gave AAU incorrect information in that respect. According to Mr H, in mid-July his doctor had told him to surrender his driving licence, and he did that before applying for cover with AAU. So at the point of applying for cover, Mr H did not have a licence at all. I think it's fair to say that, in this respect, Mr H gave incorrect information to AAU.

But in considering whether reasonable care was taken, I also have to think about why an incorrect answer was given. Here I understand that Mr H has said that as the DVLA never responded to him, he wasn't sure what had happened with his licence. So, Mr H has explained that he said he had a full licence and then provided further detail confirming that he had declared a medical condition to the DVLA and, as a result, had a one-year restricted licence. But I'm not sure that detail helps Mr H establish that he gave correct information to AAU. I say that because Mr H did not have a licence which he would have to renew after a year. Rather he had surrendered his licence and not heard further from the DVLA. Whether, in time, his health might have allowed him to regain his licence, perhaps after a year, is a different matter. I think it is possible that Mr H made a mistake in this respect. But, I think the details asked of him, and any options he was given by way of responding, were clear.

I think that rather than compounding the situation by providing the further incorrect information to AAU, Mr H could have approached the DVLA for clarification on the status of his licence before answering AAU's questions. That would have equated to Mr H taking reasonable care not to make a misrepresentation to AAU. As it is, I think Mr H failed to take reasonable care in answering AAU's questions and that in doing so, incorrect information was provided to AAU on which it based its policy offer.

I know Mr H thinks AAU should have checked the detail he gave it. But because CIDRA places the onus on the prospective policyholder to not make a misrepresentation, the insurer can act in good faith on the basis of what it is told.

So Mr H did, in my view, make a qualifying misrepresentation to AAU because he didn't take reasonable care and incorrect detail was provided upon which AAU based its policy. And, importantly, AAU has shown that it would not have offered the policy if the correct detail had been given. As I noted above, CIDRA sets out the remedies available to insurers in this situation. Essentially that is to "avoid the contract". In the circumstances here then, I think that AAU's act to treat the policy as 'void' was fair and reasonable.

But avoiding the contract means that the policy is treated as never having existed – ie the contract for it is/was avoided. So that has to be from the point the policy was applied for – the voidance, quite logically, can't be logged as having occurred several months after the misrepresentation occurred and the policy came into effect. CIDRA also requires that, unless an insurer has shown that the misrepresentation was reckless or deliberate, the policy premium is returned to the policyholder. AAU didn't show the misrepresentation was deliberate or reckless. So AAU should have logged the policy as void from the date the cover was applied for and returned Mr H's premiums. But it didn't do either of those things.

Rather AAU sought to void the policy to September 2021, which is the date the licence was marked as surrendered by the DVLA. There is no basis or right for AAU to do that. Rather, as referenced above, the policy should be marked void as of the date it was previously agreed. Further AAU refused to return Mr H's premiums. It said the policy allowed it to retain them. But there's no logical or reasonable basis on which AAU can seek to rely on policy terms for a policy which it has also sought to treat as void. And CIDRA, as I've said above, does require the premiums to be returned. As such, whilst I've found that the voidance itself was fair and reasonable, I think AAU failed Mr H in executing that action. So AAU will have to amend the policy record regarding the date of voidance and return Mr H's premium to him, plus interest from 29 December 2021 (the date it said it was treating the policy as void) until reimbursement is made.*

Mr H has been left without money he was reasonably entitled to receive. I think this was likely inconvenient for him. And, as I noted above, I think AAU's poor handling of this matter also caused him frustration. I think AAU should pay Mr H £150 compensation.

I realise that my suggested awards will seem insubstantial to Mr H – his car was stolen and without the benefit of the policy he has no recourse to replacing it or settling any finance on it. However, the by-product of the voidance is that AAU has no liability for the claim which occurred, because the policy never existed. And, unfortunately for Mr H, I have found that AAU's voidance was fair and reasonable. As such I can't reasonably require it to consider the claim."

AAU didn't object to my findings. Mr H said he appreciated the suggested awards made but that he was still disappointed. He said he acted in good faith when answering the questions asked as he did. He said he'd said he had a full licence as that was correct until such a time as the DVLA told him it had been revoked – and the only other option he was given to answer that question was "provisional" which was incorrect. Mr H said he may have

misunderstood the questions and he was not in the best of health at the time. He said he'd still needed his car to be insured even though he knew he couldn't drive and he feels that having been honest about this has gone against him. Mr H asked that I change my mind on the voidance, confirming that without that he will be left in a very serious financial situation.

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 understand that Mr H answered the questions in good faith – but that does not necessarily mean that he took reasonable care. I note Mr H said he was only given the option of stating whether his licence was full or provisional. And I understand that Mr H feels that technically, until the DVLA accepted that his 'full' licence was surrendered, it was still valid. But I bear in mind that the options Mr H was given for the type of licence he had included "Other". And when being asked what had happened about relevant medical conditions, instead of answering that the DVLA had given him a one-year restriction on his licence, which had not occurred, he could have selected "Doctor advised not to drive", which had happened.

I appreciate that Mr H was unwell and worried about his health when answering these questions. But I haven't seen anything that makes me think he was incapable of understanding the questions. And I'm mindful that Mr H seems to have been aware, at that time, that he was unwell. So for something important like this he could have asked someone to assist him with answering the questions. And as I said provisionally, he could also have acted to check with the DVLA what the status of his licence was. That, in my view, would have equated to Mr H taking reasonable care not to make a misrepresentation to AAU.

I don't doubt that even though Mr H couldn't drive, he still needed his car to be insured. And there are likely insurers and policies out there that would offer that. But AAU is not one of them and if Mr H had given accurate answers, to the questions he was asked, AAU would not have offered the policy to him.

I know this will be upsetting for Mr H but I'm not persuaded that I can fairly and reasonably require AAU to revise its position on the voidance. I think its decision in that respect – apart from how it executed that, which I explained my views on provisionally and which have not changed – was fair and reasonable.

As no objection has been made to the other points I made in my provisional decision, or in respect of my awards, I've no need to change them. My provisional findings, along with the findings here, are now those of this my final decision.

Putting things right

I require AAU to:

- Amend the record of the voidance to show the policy was avoided at the point it was agreed (incepted).
- Return Mr H's premiums, plus interest* from 29 December 2021 until reimbursement is made.
- Pay Mr H £150 compensation.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs requires AAU to take off tax from this interest. If asked, it must give Mr H a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require AA Underwriting Insurance Company Limited to provide the redress set out above at “Putting things right”.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 10 February 2023.

Fiona Robinson
Ombudsman