

## **The complaint**

Mr G complains that AA Underwriting Insurance Company Limited (AAUIC) unfairly declined a claim he made following the theft of his car and voided his car insurance policy.

## **What happened**

Mr G insured his car with AAUIC. When the car was stolen, he made a claim on his policy.

After making enquiries, AAUIC declined cover for the claim and voided Mr G's policy. It said he'd failed, when the policy was renewed, to declare a speeding conviction. If he'd done so, it said it wouldn't have sold the policy.

Mr G complained to AAUIC and when it rejected that complaint, approached our service. Our investigator thought AAUIC had acted reasonably when it declined cover for the claim as it was entitled to void the policy. He did conclude however that the refund provided to Mr G following the voidance had been calculated incorrectly.

Mr G didn't accept this and 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 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. The remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

AAUIC says Mr G failed to take reasonable care not to make a misrepresentation when he renewed the policy. It says he was sent information when the policy was due for renewal which required him to check and update the details of any motoring convictions.

When Mr G initially took out the policy, he correctly declared that he hadn't received any speeding convictions in the previous five years. The policy he made a claim on, and which has been voided by AAUIC was a renewal. For the purposes of CIDRA, this is treated as a new contract of insurance and Mr G has a duty not to make any representation if, when the policy is renewed.

I've looked at the documentation sent to Mr G before the policy was renewed. The renewal invitation outlines what it calls "*three simple checks*" which Mr G needs to make. One of these is "*Check that we have accurate and up-to-date information – it's important all the details we hold about you and your cover are correct.*"

Later in the same document, in the section headed "*Important renewal information,*" it says "*Please check the enclosed Statement of Insurance and let us know as soon as possible if you need to make a change to your cover or if your details are incorrect or missing. Failure to do so may result in your insurance being cancelled or a claim not being paid.*"

I've looked at the Statement of Insurance sent to Mr G with the renewal invitation. This asks "*Have you or any person who will drive ever been convicted (or have any pending prosecutions) for motoring convictions or received any endorsable fixed penalty notices – in the last 5 years?*" The answer given for Mr G is "No."

On the renewal invitation, and documents sent to Mr G, I'm therefore satisfied that he was made aware of the need to check that the information was correct. He doesn't seem to dispute that he'd received a speeding conviction. There's no doubt that the answer to the above question was actually "Yes," and so Mr G should have contacted AAUIC prior to the policy renewal to inform them of this. By not doing so, I'm satisfied he failed to take reasonable care and this failure amounts to a misrepresentation.

AAUIC has provided us with a copy of the relevant underwriting criteria. This confirms that if the speeding conviction had been disclosed as it should have been, it wouldn't have offered the renewal. This is commercially sensitive information and not publicly available but I'm satisfied based on this that if Mr G had contacted AAUIC after he received the renewal invitation, he would have been told the policy he held couldn't be renewed.

This means I'm satisfied Mr G's misrepresentation was a qualifying one.

AAUIC has agreed that Mr G's misrepresentation was careless, as opposed to deliberate or reckless. I agree with this. It would seem to have arisen because he hasn't taken reasonable care to ensure the information on the Statement of Insurance was accurate, but his actions in not disclosing the speeding conviction couldn't be considered deliberate or reckless.

As I'm satisfied Mr G's misrepresentation should be treated as a careless misrepresentation, I've looked at the actions AAUIC can take in accordance with CIDRA.

AAUIC has declined cover for Mr G's claim, and voided the policy. This is what CIDRA says it can do. Where an insurer wouldn't have offered cover without the misrepresentation having occurred, the policy is effectively considered to have never existed and so any claim made on the policy won't be covered.

I know Mr G has said that having checked price comparison tools, he believes AAUIC would have sold a policy to him if the speeding conviction had been declared. Whether this is the case isn't relevant to my decision. I'm satisfied that AAUIC has demonstrated that the specific policy Mr G held wouldn't have been offered if the speeding conviction had been correctly disclosed.

In correspondence with Mr G, AAUIC has said it voided the policy back to the date of renewal. This is what CIDRA says it should do. However, the refund it issued was for the unused portion of the policy (ie from the date of the theft to the expiry date). This isn't correct. Where a policy has been voided back to inception, and is treated as if didn't exist, the full amount of the premium should be returned to the policyholder.

I conclude that AAUIC's actions in declining cover for the claim and voiding the policy were fair. However, the refund it issued wasn't reasonable. It should have refunded the full premium amount when it told Mr G the policy was being voided.

To put things right, AAUIC must refund the full premium paid by Mr G. It also needs to pay 8% simple interest on that amount from the date it informed him the policy was being voided to the date of settlement. This is because he should have been in receipt of those funds from that date and where a payment to a policyholder is unreasonably delayed, we expect an insurer to pay interest on those amounts.

### **My final decision**

It's my final decision to uphold Mr G's complaint in part. While the claim was declined fairly and AA Underwriting Insurance Company Limited acted reasonably in voiding the policy, the refund it's offered to date was incorrect.

To put things right, AA Underwriting Insurance Company Limited must refund the full premium paid by Mr G. It must also pay 8% interest on this amount, from the date it informed Mr G the policy was being voided to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 17 February 2023.

Ben Williams  
**Ombudsman**