

The complaint

Mr H and Mrs H complain that Covea Insurance plc avoided their motor insurance policy (treated it like it never existed) and refused to pay for their repairs following an accident. Mrs H is a named driver on Mr H's policy.

What happened

Mr H took out a motor insurance policy with Covea through an online comparison site and then completed the purchase over the phone. The policy was then renewed. When Mrs H had an accident, they tried to claim on the policy.

Covea then found that he'd answered the question it asked about driving offences incorrectly both when he took out the policy and at renewal. And it considered this to be a careless qualifying misrepresentation, which entitled it to avoid the policy from inception, decline to repair their car and, because the policy had been used, to ask for payment of the outstanding premium.

Mr H brought his complaint to us, and our Investigator thought it should be upheld in part. She thought Covea had asked clear questions about the previous driving offences, but she thought Mr H had answered these incorrectly at inception and renewal of the policy. But she thought that if Mr H had answered correctly at inception, then Covea would still have offered cover for himself alone. So she thought it had unfairly avoided the policy from inception.

To put things right, she thought Covea should re-write the original policy in Mr H's name only and remove all avoidance information recorded about Mr H and Mrs H from inception to renewal. And she thought Covea should pay Mr H £150 compensation for the trouble and upset this error caused.

But she thought Covea wouldn't have offered cover at all if Mr H had correctly answered the question about previous motoring offences at renewal. And so she thought it was entitled to avoid the policy from this date and decline to repair their car. But she thought Covea wasn't entitled to retain the premiums. So she thought Covea should refund the premiums since renewal.

Covea replied that it thought the policy should have been avoided from inception as Mrs H was driving at the time of the accident. But it agreed to return the premiums to Mr H as the misrepresentation had been careless. Covea asked for an Ombudsman's review, so the complaint has come to me for a final 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.

I'm satisfied that 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.

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.

Covea thinks Mr H failed to take reasonable care not to make a misrepresentation when he said his application for cover and at renewal that neither he nor Mrs H had any previous driving convictions.

I've looked at the question that Mr H was asked on the online comparison site they used:

"Convictions

Have you had any driving related convictions, endorsements, penalties, disqualifications or bans in the past 5 years? YES or NO."

Further information was provided to help consumers answer the question correctly:

"Offence codes and penalty points are recorded against your driving record. Details for the last four years can be found by visiting www.gov.uk/view-driving-licence. However, please note that insurance providers require you to declare up to five years driving history."

I think this was a clear question asked by Covea through the comparison site Mr H used. But I don't think Mr H and Mrs H took reasonable care to answer this question correctly. This is because they both had convictions for speeding within the past five years. Mrs H has explained that they thought they need not declare any convictions as they had paid the fines.

Covea has provided us with evidence from its underwriting guide to show that if the question had been answered correctly, then cover wouldn't have been offered for both drivers. But it would still have offered cover for Mr H as the sole policyholder. And so Covea said that it was entitled to avoid the policy from inception.

But I don't agree. Our approach is that where the misrepresentation was deliberate or reckless, we're unlikely to say this is unfair. But where the misrepresentation was careless, we often don't think this is fair.

Under CIDRA if the misrepresentation was careless, the insurer can only avoid the contract if it wouldn't have offered it on any terms. So we think if the insurer would have not insured the named driver, but would have still insured the policyholder, it can't avoid the policy, and instead should amend the terms by removing the named driver from cover.

Mr H's misrepresentation at inception was careless. So I think Covea unfairly avoided the policy from inception to the date of renewal. I think that, under CIDRA, it should have removed Mrs H from the policy. And, to put things right, I think it should now rewrite the policy from inception to renewal with Mr H as the sole policyholder. It should remove records of the avoidance for this period. And, because this error has caused Mr H trouble and upset, I think it should pay him £150 compensation, in keeping with our published guidance.

I'll now consider what happened at renewal of the policy. On the first page of the renewal documents Covea warned Mr H that,

"It is important that the information you provide throughout the duration of your policy is accurate. Failure to disclose accurate and complete information to the best of your knowledge and belief may result in increased premiums, refusal of a claim or not being fully paid, your policy being cancelled or being made null and void and treated as if it never existed."

Mr H was told to check the policy details and to let Covea know of any changes as this could affect his cover. And I can see that on the Statement of Fact no penalties, convictions, endorsements or disqualifications were disclosed for Mr H or Mrs H.

Mr H now had two motoring conviction and Mrs H had three within the past five years. And so I think Mr H should have reasonably informed Covea that the Statement of Fact was incorrect. But he didn't. Covea's underwriting guide shows that it wouldn't have offered cover at all if these convictions had been disclosed. And so I think Mr H made a qualifying misrepresentation under CIDRA.

Covea has decided that this was a careless misrepresentation. I agree that Mr H's misrepresentation was careless because Mrs H has explained that they had thought they need not declare the convictions as they had paid their fines and they thought they had expired after a year.

As I'm satisfied Mr H's misrepresentation should be treated as careless I've looked at the actions Covea can take in accordance with CIDRA. As Covea wouldn't have offered cover at all without the misrepresentation, I'm satisfied that, in accordance with CIDRA, Covea is entitled to avoid the policy from the renewal date.

And, as this means that – in effect – his policy never existed from the renewal date, Covea does not have to deal with Mr H's claim following the accident. But it must reimburse the premiums he has paid since renewal. Covea said it may be liable under the Road Traffic Act for the other driver's repairs. And it may look to recover these costs from Mr H. But I haven't considered that further here.

As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Covea to rely on it to avoid Mr H's policy from the renewal date produces the fair and reasonable outcome in this complaint.

Putting things right

I require Covea Insurance plc to do the following:

1. Re-write the policy from inception to renewal in Mr H's name only
2. Remove any policy avoidance information recorded by Covea regarding Mr H and Mrs H from inception to the date of renewal
3. Refund all policy premiums paid by Mr H since renewal, as it's already agreed to do
4. Pay Mr H £150 compensation for any distress and inconvenience caused to him by Covea incorrectly recording policy avoidance information since inception.

My final decision

For the reasons given above, my final decision is that I uphold this complaint in part. I require Covea Insurance plc to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 16 February 2023.

Phillip Berechree
Ombudsman