

The complaint

Mr A complains that AA Underwriting Insurance Company Limited (AAUICL) unfairly cancelled his car insurance policy.

What happened

Mr A took out a car insurance policy with AAUICL. When he took out the policy, he also added his brother as a named driver. AAUICL then asked to do verification checks to ensure the information it had was accurate. When doing these checks AAUICL noticed that Mr A's brother had an undisclosed driving conviction. Because of this AAUICL cancelled Mr A's policy as he hadn't told AAUICL of the named driver's SP30 offence when taking out the policy. Mr A didn't think this was fair and complained.

AAUICL initially lost the complaint and then when it did respond it said that as Mr A had given incorrect information about the named driver when taking out the policy, it was entitled to cancel the policy in line with the terms and conditions. It also said Mr A had been flagged due to him submitting different information about his No Claims Discount (NCD) when getting a quote. Mr A didn't think this was fair and complained.

Our investigator reviewed the complaint and recommended it be upheld. She found that Mr A had provided correct information about his NCD when the policy was taken out. She also found that while Mr A agreed he'd not disclosed the named driver's SP30, this was because he hadn't been told about it as the named driver thought they didn't need to declare it after three years. She explained that while AAUICL had chosen to cancel the policy, it hadn't shown what it would have done differently if the SP30 had been declared.

Our Investigator also explained that if AAUICL wouldn't have covered the named driver, our approach to misrepresentation complaints is to remove the named driver from the policy. Because of this she, didn't think AAUICL had acted fairly and reasonably by cancelling Mr A's policy as it put him in a worse position than he would have been in under The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). She therefore recommended AAUICL remove the cancellation marker, provide Mr A with a letter to say it had cancelled Mr A's policy in error and pay him £100 compensation for the distress and inconvenience cause.

AAUICL didn't agree and maintained its position that the policy terms allowed it to cancel. As AAUICL didn't agree the complaint has come to me to decide.

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.

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.

AAUICL thinks Mr A failed to give accurate information when he took the policy out by declaring the named driver didn't have any driving convictions or offences. AAUICL hasn't provided the question Mr A was given asked when he input his details online. I've therefore looked at the policy documents and within the section which has the declarations about the drivers it says:

"Have you or any person who will drive ever been convicted (or have any pending prosecutions) for motoring offences or received any endorsable fixed penalty notices - in the last 5 years?"

Next to the details for Mr A and the named driver it's marked "No". AAUICL has said the named driver had an undisclosed SP30. Mr A doesn't dispute this but has said because it was more than three years ago the named driver had thought he didn't need to tell him. From looking at this question I'm satisfied it's clear and that Mr A failed to take reasonable care not to make a misrepresentation because it was his responsibility to check the information. However, for AAUICL to take any action at all it needs to show what it would have done differently.

AAUICL hasn't shown what it would have done if Mr A had declared the named driver had an SP30 when taking out the policy. I'm therefore not satisfied it's shown this was a qualifying misrepresentation under CIDRA and therefore has no remedy under CIDRA. Instead AAUICL has relied on a term in the policy which says that AAUICL is able to give seven days' notice of cancellation if Mr A gives any incorrect information to AAUICL.

The terms allow AAUICL to cancel a policy when incorrect information has been given, however I don't think it would be fair and reasonable to do so when that would put Mr A in a worse position than the remedies under CIDRA for a qualifying misrepresentation. Although CIDRA also doesn't say that an insurer loses its right to cancel. Given the implications of having a cancelled policy, I don't think it is fair and reasonable to cancel Mr A's policy when he didn't knowingly give incorrect information without giving him the option to cancel it first. Mr A has told us that he asked his brother about driving offences and said he wasn't told about the SP30 as it was more than three years ago and so his brother didn't think he needed to declare it.

As AAUICL no longer wished to continue with cover after discovering the misrepresentation, I think it would have been fair and reasonable to let Mr A know this and give him the option to cancel first. If AAUICL had done this I think Mr A would have agreed to cancel his policy, rather than having AAUICL cancel it, due to the implications involved.

As AAUICL didn't give Mr A the option to cancel his policy I've looked at how to put things right. AAUICL needs to remove the cancellation marker from any internal and external databases, it also needs to provide Mr A with a letter confirming AAUICL cancelled his policy in error, so he can provide it to future insurers if needed. AAUICL should also pay Mr A £100 for the unnecessary distress and inconvenience caused by not giving him the option to cancel.

My final decision

For the reasons explained above, I uphold this complaint. I require AA Underwriting Insurance Company Limited to:

1. Remove the cancellation from any internal and external databases
2. Provide Mr A with a letter confirming his policy was cancelled in error
3. Pay Mr A £100 for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 12 April 2023.

Alex Newman
Ombudsman