

The complaint

Mr O complains that Mulsanne Insurance Company Limited (MISL) cancelled his motor insurance policy and is now seeking an outstanding balance from him. He wants a refund.

What happened

Mr O took out a telematics policy with MISL through an online comparison site. The policy was administered on MISL's behalf by its agent. In the application, he was asked to state his years of No Claims Discount (NCD). He stated that he had three years' NCD, but MISL later found that he had two years'.

MISL asked Mr O to pay an additional premium and fee. Mr O initially wanted to cancel the policy, but he decided to keep the policy running. Mr O didn't fit his telematics box within the required time and so MISL cancelled the policy and Mr O was charged an outstanding premium. The debt was later passed to a collections agency.

Our Investigator recommended that the complaint should be upheld in part. He thought MISL was entitled to cancel the policy in keeping with its terms and conditions as Mr O hadn't fitted the telematics box within the time required. And he thought MISL's charges for this were clearly stated and so they could be reasonably applied.

But he thought MISL hadn't acted fairly by increasing the premium and charging a fee because Mr O had stated his incorrect NCD years. He thought The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) should have been applied. He thought Mr O had made a qualifying misrepresentation under CIDRA as MISL would have charged a higher premium if he'd answered the NCD question correctly.

So he thought MISL should recalculate the cancellation of the policy without the additional premium and fee and confirm the reduced balance to Mr O with any applicable refund. But he thought the other charges made were applicable. However, as CIDRA was incorrectly not used, he thought MISL should pay Mr O £100 compensation for the trouble and upset caused.

MISL replied that it thought CIDRA didn't apply. It 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.

MISL finally cancelled Mr O's policy because he hadn't fitted his telematics box within the required timescale. I can see that this is explained on page 22 of the policy booklet under the Cancellation section. And I can see that MISL gave Mr O seven days' warning of this. I'm satisfied that Mr O hadn't complied with this policy term and condition. So I think MISL was entitled to cancel his policy.

MISL then applied its cancellation charges. And I think these are clearly set out in the policy's terms and conditions. Mr O was asked to pay an outstanding balance, but he didn't do this in time and so his debt was passed to a collections agency and a further fee was

charged. Again, I think this was in keeping with the policy's terms and conditions, with one exception.

The cancellation charges were based on Mr O being charged an additional premium and a mid-term adjustment fee because of the incorrect NCD in his application. But I agree with the Investigator that this should not have been charged. I'll now explain why I think this.

I think Mr O misrepresented his NCD years when he first took out his policy. The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). MISL's agent said it doesn't allow CIDRA, but I am not aware that MISL is allowed to exempt itself or its agents from this law.

CIDRA 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it is entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

I've looked at the question about NCD years Mr O was asked when he completed the online application for his policy, and I agree he failed to take reasonable care. And I think this was a clear question asked by MISL through the comparison site Mr O used.

Mr O said he had three years' NCD, and he said he'd estimated this. But he actually had accrued just two years' NCD. I think he could have checked this if he was unsure. And I think this means Mr O failed to take reasonable care not to make a misrepresentation when he said he had three years' NCD.

MISL would evidently have still provided cover for Mr O if he had not made this misrepresentation as it would have charged him a higher premium. This means I am satisfied Mr O's misrepresentation was a qualifying one under CIDRA.

And I think Mr O's misrepresentation wasn't a reckless or deliberate misrepresentation as MISL haven't shown this. I think Mr O simply didn't take sufficient care when answering the question. And so I think his misrepresentation was careless.

CIDRA provides certain remedies if the qualifying misrepresentation was careless. The insurer can do the following if it would still have provided insurance but charged a higher premium, and there has been no claim.

It may change the terms of the policy and/or reduce proportionately the amount to be paid on any future claim. It must give notice to that effect to the consumer or may instead cancel the policy altogether by giving reasonable notice to the consumer.

If the insurer tells the consumer it wants to change the terms of the policy and/or reduce proportionately the amount to be paid on any future claim, the consumer has the right to cancel the policy by giving reasonable notice to the insurer. If either party cancels the policy the insurer must refund any premiums paid for the cancelled cover in relation to the time left on the policy.

Where the policyholder doesn't want to pay that additional premium the insurer must use the remedies available in CIDRA. And we often think that the fairest outcome would be for the insurer to give the consumer the opportunity to cancel the policy themselves, given this may not then lead to them having to declare in future that an insurer had cancelled a previous policy.

Irrespective of who cancels the policy, CIDRA says the insurer must return the unused premium. So we take this to mean the insurer can't deduct a cancellation fee from the unused premium if it's cancelling a policy under CIDRA.

So, in Mr O's case, I can't see that MISL followed the remedies set out in CIDRA. MISL applied an additional premium and confirmed this to Mr O. I can't see that it gave Mr O the opportunity to cancel his policy himself. Mr O had explained that he'd found cheaper cover elsewhere. But MISL persuaded him to keep the policy in place and to pay a higher premium. So I think MISL disadvantaged Mr O.

And so I think MISL unfairly applied the additional premium and mid-term adjustment fee. And I think it should now recalculate Mr O's cancellation charges without these and either adjust the amount he owes or pay him any applicable refund. MISL said the fee was the responsibility of Mr O's broker. But as it was applied due to the additional premium being applied by MISL, I think MISL is responsible for it.

And, as I think MISL, through its agents, hasn't correctly applied CIDRA as it should have done, I think it should pay Mr O £100 compensation for the trouble and upset caused.

And – as CIDRA reflects our long-established approach to misrepresentation cases, I think requiring MISL to rely on it produces the fair and reasonable outcome in this complaint.

Putting things right

I require Mulsanne Insurance Company Limited to do the following:

1. Recalculate Mr O's cancellation without the additional premium or its mid-term adjustment fee and reduce the outstanding balance or pay him any applicable refund.
2. Pay Mr O £100 compensation for the distress and inconvenience caused by its handling of his policy.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 24 May 2023.

Phillip Berechree
Ombudsman