

The complaint

Mr P has complained that Covea Insurance Plc avoided (treated it as if it never existed) his motor insurance policy and refused to pay his claim.

What happened

Mr P took out a motor insurance policy with Covea through a broker. When the named driver on his policy was involved in an accident, he tried to claim on his policy. Covea declined his claim, avoided his policy and kept the premiums he'd already paid, though it later agreed to return these.

When Mr P complained, Covea said he'd answered the question he'd been asked about his and the named driver's previous motoring convictions incorrectly. And it considered this to be a careless qualifying misrepresentation, which entitled it to avoid his policy and refuse his claim. But it did pay the other driver's claim.

our investigator's view

Mr P brought his complaint to us, and our Investigator thought it shouldn't be upheld. She agreed there had been a qualifying misrepresentation. And she believed it was careless. So she thought Covea was entitled to avoid the policy and decline the claim. Mr P thought Covea should have made checks when the policy was taken out. But she explained that it isn't required to do this.

Mr P didn't agree with the Investigator and asked for an Ombudsman's decision.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr P and to Covea on 17 April 2023. I summarise my findings:

I could understand that this has been a stressful and frustrating experience for Mr P. I was sorry to hear about the financial difficulties having his car repaired will cause him. I could also understand that he feels it's unfair that Covea paid for the other driver's repairs, but not for his.

Mr P had raised concerns about Covea's business practices, but it's not my role to consider these as we are not the regulator. My role is to consider whether Covea has responded to Mr P's complaint fairly and reasonably and acted in keeping with the policy's terms and conditions and relevant regulations, laws and industry practices.

I was satisfied that the relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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. 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.

Covea thought Mr P failed to take reasonable care not to make a misrepresentation when he stated in his application that neither he nor the named driver had previous motoring convictions within the past five years. And I agreed he failed to take reasonable care.

The question he was asked when he completed the application via the broker wasn't available. But Mr P had told us that the broker did ask him whether he had any previous convictions. And I saw what was recorded on the Statement of Fact which was:

"Have you, or has any person who may drive the vehicle: been convicted of any motoring offences, or had a fixed penalty imposed within the past 5 years?"

And I thought this was a clear question asked by Covea. Mr P answered "No". But Covea later found that both Mr P and the named driver had points on their licences. Mr P said he wasn't aware of these. He thought the broker should have asked his partner the question directly. But I was satisfied that it was for Mr P to provide this information and to check it with his partner if he was unsure.

So I thought this meant Mr P failed to take reasonable care not to make a misrepresentation when he said that neither driver had previous motoring convictions within the past five years.

Mr P thought Covea, or his broker, should have checked their driving licences when he took out his policy. But there's no requirement for a business to do this. And I could see that the Welcome Letter sent with the policy documents clearly explains Mr P's responsibility to provide accurate information:

"All quotations are based on the information provided by you and as shown on the attached Statement of Fact, which should be checked carefully. Please take reasonable care to ensure all questions have been answered honestly and to the best of your knowledge. If you make a misrepresentation to your insurer (either deliberately or carelessly) this could result in your cover being invalidated, and potentially lead to a claim being unpaid. Please note that it is your responsibility to provide complete and accurate information to insurers when you take out your policy, throughout the life of your policy and when you renew your insurance."

Covea had 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. And so Covea said that it was entitled to avoid the policy from inception.

But I didn't agree. This was because Covea told us it would still have offered cover for Mr P as the sole policyholder. Our approach then is that where the misrepresentation was deliberate or reckless, we're unlikely to say it's unfair for the insurer to avoid the policy. 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. Instead, it should amend the terms by removing the named driver from cover.

Mr P's misrepresentation was careless. So I thought Covea unfairly avoided the policy. I thought that, under CIDRA, it should have removed the named driver from the policy. And, to

put things right, I thought it should now rewrite the policy from inception with Mr P as the sole policyholder. And it should remove records of the avoidance.

Covea explained that this would result in an additional premium of £598.96 and Mr P would need to reimburse it the refund of premium it has already paid him. Mr P had already explained that he was in financial difficulties because of the cost of repairing his car. So I thought it would be fair to give him the option of paying this amount to have his policy reinstated for the remaining term (two months).

As a claim had been made the insurer should assess the claim based on the new terms. So Covea may still decline the claim because the named driver was driving the car at the time of the accident.

Therefore, I was satisfied Covea wasn't entitled to avoid Mr P's policy in accordance with CIDRA. And – as CIDRA reflects our long-established approach to misrepresentation cases, I thought not allowing Covea to rely on it to avoid Mr P's policy produces the fair and reasonable outcome in this complaint.

Subject to any further representations from Mr P and Covea, my provisional decision was that I intended to uphold this complaint in part.

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.

Covea replied asking me to correct one paragraph which was misleading, and I have done this. Covea also thought that the complaint should not be upheld as it had been brought before it had made a change in its processes. But I don't think that would be fair or reasonable as CIDRA has been in force for ten years and I can't penalise Mr P because Covea is late in adopting it.

Mr P replied asking whether, if he accepted my decision, Covea would settle his claim. But, as I've said above, because the named driver was driving the car at the time of the accident, Covea may still decline the claim. And it has confirmed that it will still decline the claim. And I can see that it's seeking to recover its outlay for the other driver's claim from Mr P.

So I think it's for Mr P to decide whether to accept my decision, pay the additional premium and return his refunded premium, and have the avoidance removed from his record, or to reject my decision. In either case, Covea will still decline the claim.

Putting things right

I require Covea Insurance plc to do the following:

1. Re-write the policy from inception in Mr P's name only, on payment of the additional premium and return of the refunded premium
2. Remove any policy avoidance information recorded by Covea regarding Mr P and the named driver from all internal and external databases.

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 Mr P to accept or reject my decision before 7 June 2023.

Phillip Berechree
Ombudsman