

The complaint

Miss M complains that One Insurance Limited avoided her motor insurance policy (treated it like it never existed) and refused to pay her claim.

What happened

In May 2022, Miss M's fiancé, Mr M, took out a motor insurance policy with One Insurance through a price comparison site on behalf of himself and Miss M. He recorded Miss M as the policy holder with Mr M as a named driver.

In January 2023, when the car was stolen, Miss M made a claim on the motor insurance policy. One Insurance requested the V5 document and noticed the registered keeper on the V5 was Mr M. As a result, One Insurance said Miss M had answered the question it asked about whether she was the owner and registered keeper incorrectly when buying the policy. This is because Mr M had completed it on behalf of Miss M as the main policy holder and she wasn't the registered keeper. One Insurance considered this to be a qualifying misrepresentation, which entitled it to avoid her policy and decline the claim. It deemed it to be a careless misrepresentation and so returned the premium to Miss M.

Miss M explained that although Mr M bought the policy online and is the registered keeper on the V5 – they can only add one name – the car is theirs jointly for family use. They only have one car and used joint funds (from a release of equity and a joint savings account) to buy it. She is listed as the policy holder as she is the main driver.

Miss M complained to One Insurance but it didn't change their mind. In the final response letter, it explained the registered keeper must be the policy holder or spouse and so they would've been covered if Mr M and Miss M were married. Miss M explained they were due to marry but, due to the pandemic, this was postponed. However, they live together, are engaged with two children, own a home together (with a joint mortgage since 2016) and share all utility bills and responsibilities. To all intents and purposes, they are married, but without a ceremony to confirm it, and feel they shouldn't be treated unfairly because of this.

Miss M brought her complaint to our service. The Investigator felt the underwriting criteria from One Insurance lists the acceptable '*vehicle owner/keeper*' (not vehicle owner *and* keeper) as follows.

- Proposer
- Spouse

As Miss M was the owner of the vehicle, the Investigator said One Insurance wasn't right to avoid the policy. And they thought Miss M's complaint should be upheld under our fair and reasonable remit. To put things right, they asked One Insurance to reinstate the policy, consider the claim and pay £200 for the distress and inconvenience caused.

One Insurance didn't agree. It says, if the consumer answers 'no' to the question whether they're the owner and registered keeper, the consumer is taken to separate questions for

who the owner and registered keeper are. Also, it sent an underwriting guide which states the proposer, spouse or leasing company should be both the owner *and* registered keeper.

I issued a provisional decision on this complaint on 19 June 2023 where I said the following.

'In this matter, the first issue to decide is whether One Insurance acted in line with the relevant law when it avoided Miss M's policy. I'll also consider if it acted fairly and reasonably. If it didn't, I'd also need to consider how One Insurance should put things right.

did One Insurance act in line with the relevant law in this case?

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.

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 must show it would've 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.

One Insurance say Mr M – filing in the comparison site form – failed to take reasonable care not to make a misrepresentation when he answered 'yes' to the following question.

'Are you the owner and registered keeper of the car (or will you be)?'

Having considered this, I think it's arguable whether One Insurance has shown:

- the question asked here is sufficiently clear or specific enough to make Mr M aware he needed to answer it on behalf of Miss M as the main driver;*
- Mr M didn't take reasonable care when answering it; and*
- there's a qualifying misrepresentation. I say this particularly given the terminology used in the question and underwriting criteria initially sent to our service.*

I appreciate One Insurance says if Mr M had answered 'no' to the key question, options are given for who the owner and registered keeper are to be entered separately. But that assumes the initial question is clear and specific enough such that Mr M would've thought he should say no, he (as the question says 'you' and he was a named driver) wasn't the owner and registered keeper of the car (even though he was) and Miss M wasn't either (even though she was the owner and – but for the restrictions on vehicle registration – would've likely also been the registered keeper). And, as set out above, I consider it's questionable whether the question is clear and specific enough.

did One Insurance act fairly and reasonably in this case?

Even if I thought there was a qualifying misrepresentation made by Mr M, on behalf of Miss M, which allowed One Insurance to avoid the policy under CIDRA, I don't agree One Insurance has acted fairly and reasonably in this matter. I'll explain why.

It's my view One Insurance is on notice the question 'Are you the owner and registered keeper of the car (or will you be)?' isn't clear and causes confusion amongst spouses. I say this because:

- *One Insurance has shared underwriting criteria and explains in this exact scenario it wouldn't have avoided the policy if Miss M and Mr M were spouses. This is even though they would've made the same 'misrepresentation' it is now relying on to avoid the policy.*
- *It's likely this exception only needs to exist in the underwriting criteria because the issue has come up previously and One Insurance accepts people give the wrong answer to the question.*
- *In the schedule of insurance, under both 'registered keeper' and 'vehicle owned by', it refers to the 'Proposer/Policyholder' suggesting One Insurance accepts they can be two separate parties even when only one question has been asked about the owner and registered keeper together.*

Having confirmed the misrepresentation is acceptable in this exact scenario if Miss M and Mr M were married, I can't see why it'd be fair and reasonable to treat Miss M and Mr M any differently. In all facets of their life, they operate as a married couple and, in effect, there's no material difference between their relationship and that of a married couple, aside from the marriage certificate. In fact, clauses like this generally include common law spouses and civil partners. Further, but for the pandemic, I note they would already be married. So, I can't see it'd be fair and reasonable for One Insurance to avoid Miss M's motor insurance policy in this particular case.

For the reasons set out above, I don't agree I can say the actions taken by One Insurance to avoid Miss M's policy were in line with CIDRA nor do I think it was acting fairly or reasonably in this particular matter.'

I also outlined the things One Insurance needed to do to put things right. Miss M responded to accept the provisional decision.

One Insurance responded and didn't accept my provisional decision. It said:

- The owner and keeper are separate matters. And the keeper here differs to the owner.
- Miss M and Mr M don't have a marriage certificate, and this shows they aren't married and can't legally be declared as spouse, it also shows there is a difference in their relationship.
- It questions why Mr M completed the remainder of the sections as if he was Miss M except for the question about being the owner and the registered keeper of the car when he was clearly buying it for his partner.
- The policy should've either been taken out with Mr M (the keeper) being the policyholder or the keeper recorded as 'partner/common law'.
- It wouldn't avoid a policy where such a misrepresentation has been made by a spouse. However, this is because CIDRA sets out that it cannot avoid a policy for a careless misrepresentation if the risk was still acceptable.
- It doesn't appreciate the assumption it has had issues with its underwriting criteria as this is a strong suggestion of its capabilities.
- One Insurance rates common law and spouse differently. Having a different registered keeper of a vehicle presents a different risk and so is priced accordingly and accepted/declined based on risk appetite.

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've reviewed One Insurance's comments and they've not persuaded me to change my decision. I say this because I'm not satisfied One Insurance has shown there's a misrepresentation - nor qualifying misrepresentation - under CIDRA allowing it to avoid Miss M's policy nor that it'd be fair and reasonable to do so in Miss M's particular situation. This is for the reasons stated in this decision and in my provisional decision. Therefore, it needs to reinstate Miss M's policy and take the steps outlined below to put things right.

In relation to some of the specific points raised by One Insurance, I respond as follows:

- I accept the owner and keeper are separate. But, for the reasons explained in this decision and the provisional decision, I don't accept One Insurance has shown the question related to this is sufficiently clear and specific, Mr M failed to take reasonable care when answering it nor there was a qualifying misrepresentation.
- While Mr M filled in the details on the comparison site, the question about the owner and keeper comes at the beginning of the customer journey, just after questions about the vehicle to be insured, and is under the heading 'Your Car'. At this point, Mr M hadn't been asked to confirm who the policyholder would be and so it's my view his answer to the question was a true reflection of the situation. It was Mr M's car (owned jointly with Miss M) and he was also the registered keeper.
- I accept Mr M and Miss M aren't legally married and don't have a marriage certificate. However, having confirmed the misrepresentation is acceptable to One Insurance in this exact scenario if Miss M and Mr M were married, I can't see why it'd be fair and reasonable to avoid the policy when they are living as a married couple and the delay in them marrying was not due to their own fault but as a result of the pandemic. In this particular matter, therefore, Miss M and Mr M should be treated as though they are married - a risk One Insurance is willing to accept.

Putting things right

To put things right, One Insurance Limited needs to do the following:

1. Reinstate Miss M's policy which means it runs the full term from May 2022.
2. Deal with the claim under the terms of the motor insurance policy. This should include considering appropriate compensation for loss of use of the vehicle and adding 8% simple interest to the settlement sum from one month after the date of claim until the date it is paid.
3. Remove all records of the policy avoidance from all internal and external databases.
4. Give Miss M a letter stating the policy was avoided in error and confirming that its records have been amended. Miss M can show this to the insurer(s) she's had since One Insurance – if any - to see if her premiums would need to be adjusted.
5. Pay Miss M £200 for the distress and inconvenience this matter has caused. This should be paid within 28 days of the date on which we tell them Miss M accepts my final decision. If One Insurance pays later than this, it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.
6. From the overall amount One Insurance is due to pay Miss M, it can deduct the premium it had charged for the policy year from May 2022 but only if this amount has already been returned to her.
7. HM Revenue & Customs requires One Insurance to take off tax from interest. One Insurance must give Miss M a certificate showing how much tax it's taken off if she

asks for one.

My final decision

For the reasons explained above and in my provisional decision, my final decision is that I uphold this complaint. To put things right, One Insurance Limited needs to take the steps outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 25 July 2023.

Rebecca Ellis
Ombudsman