

The complaint

Mr H and Mrs H have complained that Premier Insurance Company Limited avoided (treated it as if it never existed) their motor insurance policy and refused to pay their claim for damage to their car.

What happened

Mr H made a change of car through his broker's online portal and said he was the car's legal owner and registered keeper. When his car was damaged whilst parked outside his house, he tried to claim on his policy.

Premier declined his claim, avoided his policy from the date the car was changed on the policy and gave a pro-rata refund of the premiums he'd already paid. When Mr H complained, it said he'd answered the question he'd been asked about the car's owner and keeper incorrectly. And that it considered this to be a careless qualifying misrepresentation, which entitled it to avoid his policy and refuse his claim. But Mr H said he had made a genuine error.

Mr H brought his complaint to us, and our Investigator thought it should not be upheld. She agreed there had been a qualifying misrepresentation. And she thought it was careless. And so she thought Premier was entitled to avoid the policy and decline the claim.

Mr H doesn't agree with the Investigator and has asked for an Ombudsman's decision. He said he had corrected the error before the claim was reported to Premier.

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 can understand that Mr H feels frustrated that his claim has been declined. 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.

Premier thinks Mr H failed to take reasonable care not to make a misrepresentation when he stated in his application via the broker's online site that he was the car's registered owner and keeper. And I've looked at the question he was asked when he completed the application and agree he failed to take reasonable care. This is because he was asked who the car's registered owner and keeper was. And I think this was a clear question asked by Premier through the site Mr H used.

Mr H said the proposer, himself, was the car's registered owner and keeper. And he later explained that he had swapped cars with his daughter. But the car's registration documents showed that Mr H's daughter was the car's registered owner and keeper. And he didn't notice or correct this error until after the accident. And I think this means Mr H failed to take reasonable care not to make a misrepresentation.

Premier has provided evidence which shows that if Mr H had not made this misrepresentation it would not have offered cover at all as Mr H had no insurable interest in the car. This means I am satisfied Mr H's misrepresentation was a qualifying one under CIDRA.

I also think Mr H's misrepresentation was a careless misrepresentation. This is because I think Mr H must have realised the car was still in his daughter's name, but he didn't act to correct this at the time.

Therefore, I'm satisfied Premier was entitled to avoid Mr H's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, Premier does not have to deal with his claim following the damage to his car. I can also see that Premier provided Mr H with a pro-rata refund of his premium from the date of the avoidance.

And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Premier to rely on it to avoid Mr H's policy produces the fair and reasonable outcome in this complaint.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 5 February 2024.

Phillip Berechree
Ombudsman