

The complaint

Mrs M has complained that AA Underwriting Insurance Company Limited cancelled her motor insurance policy. She was concerned about the impact the cancellation may have on future premiums.

What happened

Mrs M took out a motor policy with AA Underwriting in November 2022. AA Underwriting subsequently carried out a validation check, which led it to requesting documentation including driving licence information. When it became apparent that Mrs M hadn't disclosed an SP30 conviction, her policy was cancelled. AA Underwriting wrote to Mrs M advising her of this and informing her that her policy would be cancelled on 7 December 2022.

Mrs M then called her broker and was advised it was possible to pay an additional premium and for the policy not be cancelled, which she did. But ultimately AA Underwriting cancelled her policy. Mrs M only became aware the policy had been cancelled in February 2023 when she received a letter from the police.

Our investigator didn't conclude that AA Underwriting had done anything wrong in relying on the policy term which states that the insurer can cancel the insurer if there are grounds to do so, which include failing to provide the correct information.

Mrs M appealed. I issued a provisional decision on 25 September 2023. I explained that I would look at any more comments and evidence that I received by 23 October 2023. But unless the information changed my mind, my final decision was likely to be along the lines of my provisional decision. I said as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so I'm reaching a different conclusion to our investigator for the following reasons:

- For clarity I should say I'm looking only at the actions of AA Underwriting. AA Underwriting is not responsible for the broker's error – that has been the subject of another complaint.*
- AA Underwriting has said that the Consumer Insurance Disclosure and Representation Act 2012 (CIDRA) doesn't apply here. I don't agree that this is so. Although Mrs M's policy states that the insurer can cancel if there are grounds to do so, which include failing to provide the correct information, this in itself doesn't permit AA Underwriting to contract out and deprive Mrs M of the protection that CIDRA may provide. I say this as it seems to me that such a term, in these circumstances, puts Mrs M in a worse position than she would have been in had CIDRA been applied.*
- 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.

- *Mrs M doesn't dispute that she provided incorrect information. She has explained how this came about. She wasn't aware that the conviction stayed on her licence for five years. Despite two requests for clarification of the underwriting position nothing has been forthcoming from AA Underwriting. As it hasn't shown that without the misrepresentation it wouldn't have entered into the contract or would have done so but only on different terms, I can't conclude the misrepresentation was qualifying. It follows that I don't provisionally find that AA Underwriting was entitled to cancel Mrs M's policy.*
- *But for completeness I would say that even if AA Underwriting had shown that it would have acted differently, for example by taking a higher premium, I find it should have offered Mrs M that option before cancelling her policy.*
- *However, the matter has now moved on. Mrs M took an insurance policy elsewhere. But because of the cancellation on her record, she had to pay more than she otherwise would have. I'm minded to conclude that AA Underwriting should refund Mrs M the difference between the premium she was paying under the cancelled policy and the premium she paid for her new policy. Mrs M will need to provide evidence of the premium paid for the new policy.*
- *Additionally, Mrs M would like compensation. She was driving without insurance sometimes with a young child and says she could have lost her job. I do understand that the situation has been distressing for Mrs W, but I can't ask AA Underwriting to pay compensation for what might have happened. Likewise it's clear that Mrs M's understanding of cover being in place was not wholly the fault of AA Underwriting, but also of the broker. A complaint against the broker has been considered separately. But I can see that Mrs M was caused distress which she says impacted her mental health. I think compensation is merited and find that £150 is fair in the circumstances.*

My provisional decision was that I was minded to require AA Underwriting Insurance Company Limited to:

- Remove any records of the policy cancellation from internal and external databases
- On receipt of evidence from Mrs M as to the premium she paid under the new policy, refund Mrs M the difference between the premium she was paying under the cancelled policy and the premium she paid for the new policy
- Pay Mrs M £150 in compensation

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.

As neither party responded to my provisional decision, I see no reason to change my

findings and adopt them here.

My final decision

I uphold this complaint and require AA Underwriting Insurance Company Limited to

- Remove any records of the policy cancellation from internal and external databases
- On receipt of evidence from Mrs M as to the premium she paid under the new policy, refund Mrs M the difference between the premium she was paying under the cancelled policy and the premium she paid for the new policy
- Pay Mrs M £150 in compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 21 November 2023.

Lindsey Woloski
Ombudsman