

## The complaint

Mr B complains that Trinity Lane Insurance Company Limited rejected a claim on his motor insurance policy.

## What happened

In October 2022 Mr B took out a motor insurance policy for his car, which was underwritten by Trinity. In December, he reported that the car had been stolen and made a claim on his policy.

Trinity looked into the claim but said Mr B had provided incorrect information when he bought the policy, as he'd said he kept the car on his drive overnight but its investigation showed it had been kept on the road. Trinity said if it had known the car wasn't kept on a drive it would never have offered the insurance. So it declined the claim.

Mr B complained but Trinity didn't change its decision. So he referred the complaint to this Service but our investigator didn't think it should be upheld. He said Trinity had shown that Mr B had made a misrepresentation when he bought the policy and if it had known he kept the car on the road it wouldn't have agreed to insure the vehicle.

Mr B disagreed and requested an ombudsman's decision. He said he had another car that he kept on the road and Trinity had agreed to insure that car. So it wasn't correct to say it wouldn't insure his car unless it was parked on the drive.

Before making my decision I asked Trinity for evidence about this. Trinity asked for more time to provide the information, which was agreed, but we didn't receive any further comments. So I issued a provisional decision saying, on the basis of the evidence I had, I was minded to uphold the complaint. I set out my reasons as follows:

*In making my decision I need to consider what's fair and reasonable in all the circumstances of the case, taking into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the time.*

*In this case, the relevant law is the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. If a consumer fails to do this the insurer has certain remedies, provided the misrepresentation is a qualifying misrepresentation.*

*For it to be a qualifying misrepresentation the insurer has to show it either would not have offered the insurance at all, or would have offered it on different terms, if the consumer hadn't made the misrepresentation.*

*Trinity says Mr B failed to take reasonable care not to make a misrepresentation when he said his car was kept on his drive at night. When considering this, I've looked at what question Mr B was asked; the answer he gave; and whether that answer was correct.*

*Mr B was asked "Where is the vehicle kept at night" and answered "Parked on Drive". When the claim was being investigated, Mr B signed a statement in which he said at three different points that his car was kept on the road – including that it "has always been left parked locked and secured on the opposite side of [his road]..." The statement included a 'Statement of Truth', meaning Mr B was confirming what he said in the statement was true. If what he said in the statement was true, then the answer he gave when he took out the policy can't have been true.*

*Looking at this and other evidence Trinity gathered including photos, I'm satisfied Mr B made a misrepresentation when he said his car was kept on the drive.*

*But for it to be a qualifying misrepresentation under CIDRA Trinity has to show that, if Mr B had given the correct information when he bought the policy, it would have done something different (either not offering the policy at all, or offering it on different terms).*

*Trinity said it wouldn't have agreed to insure Mr B's car. It has referred to an email issued by an underwriter saying on street parking was unacceptable in the area where Mr B lived. If that's correct, then I'd agree this would be a qualifying misrepresentation. However, Mr B says his other car was also insured by Trinity even though it knew that car was kept on the road. As this contradicted what Trinity had said, I asked for clarification about this but it hasn't provided any further evidence.*

*So I have Mr B saying Trinity did insure a car of his that was kept on the road rather than on his drive, and nothing from Trinity to confirm that's not the case.*

*In the absence of evidence from Trinity to contradict what Mr B says, I don't think it has shown there was a qualifying misrepresentation; that would require me to be satisfied it wouldn't insure a car kept on the road and the information from Mr B indicates that it would.*

*This means, based on the evidence available, I'm not satisfied Mr B's misrepresentation was a qualifying one. So there's no basis under CIDRA for Trinity to take any action and it should not have rejected his claim. I'm therefore minded to uphold the complaint. Trinity should accept the claim and settle it in line with the policy terms.*

Neither party has replied to the provisional 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.

As I have received no further comments, the position remains as it was when I issued my provisional decision – Mr B says Trinity did insure his other car although it knew the car was parked on the road and Trinity hasn't provided any evidence to contradict this.

Trinity had the opportunity to provide evidence about this when we specifically asked about it, and again in reply to the provisional decision, but hasn't done so.

In these circumstances, I'm not satisfied it has shown there was a qualifying misrepresentation and on that basis, it wasn't fair to decline the claim.

### **My final decision**

My final decision is that I uphold the complaint and direct Trinity Lane Insurance Company Limited to settle the claim in line with the policy terms.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 December 2023.

Peter Whiteley  
**Ombudsman**