

The complaint

Mr B has complained that Accelerant Insurance Europe SA/NV declined his claim on his caravan insurance policy after his caravan was stolen. He wants it to pay his claim.

What happened

Mr B took out a caravan insurance policy with Accelerant through an online site. When his caravan was stolen from its storage site, he tried to claim on his policy. Accelerant declined his claim. When Mr B complained, it said Mr B hadn't complied with the tracker condition of his policy as Mr B's caravan hadn't had a tracker fitted. Mr B's caravan was later recovered damaged.

Mr B brought his complaint to us, and our Investigator thought it should be upheld. He thought Accelerant had unfairly declined the claim. He thought the relevant law was The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). And he agreed Mr B had made a qualifying misrepresentation when he took out his policy.

But he thought if Mr B hadn't made the misrepresentation, then Accelerant would have offered cover on different terms. So he said Accelerant should consider Mr B's claim. And, if it decided to settle it, it should do so proportionately. And he thought Accelerant should pay Mr B £300 compensation for the trouble and upset caused.

Accelerant doesn't agree with the Investigator and has asked for an Ombudsman's decision. It said Mr B had provided incorrect information about the tracker when he had taken out the policy and if he had been accurate then it would have charged more for his cover. But it said that Mr B would then have chosen cheaper cover elsewhere. So it thought it was being treated unfairly.

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 Accelerant thinks it is being treated unfairly in being asked to consider Mr B's claim. But its decision to decline the claim is based on Mr B making a misrepresentation. And so I'm 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.

Accelerant thinks Mr B failed to take reasonable care not to make a misrepresentation when he stated in his online application that his caravan was fitted with a tracking device. And I've looked at the question he was asked when he completed the application and I agree he failed to take reasonable care. This is because he was asked to:

"Select the security devices on your caravan from the lists below. You can select multiple devices from each list."

32 options were listed under different headings. And I think this was a clear question asked by Accelerant through the site Mr B used.

Mr B said he didn't choose two options that were later confirmed on his policy documents. But I'm not persuaded that this is accurate. I think Mr B selected that his caravan had an electronic tracking device. But it didn't. And I think this means Mr B failed to take reasonable care not to make a misrepresentation when he said his caravan was fitted with an electronic tracking device.

Accelerant has provided evidence from its underwriters which shows that if Mr B had not made this misrepresentation it would have at least charged him a higher premium. It said it would have charged a 20% higher premium and removed the tracker endorsement from the policy so that Mr B would have been covered for the theft. This means I am satisfied Mr B's misrepresentation was a qualifying one under CIDRA.

Accelerant hasn't shown that the misrepresentation was deliberate or reckless, and so I think it was careless. This is because I'm satisfied Mr B didn't take sufficient care to answer the question correctly. And the caravan was stolen before Mr B received his policy documents, so he didn't have an opportunity to check them for accuracy and correct the errors.

And so, as I've said above, because Accelerant would have charged Mr B a higher premium if he hadn't made the misrepresentation, it will have to change the terms of the contract and consider the claim and settle it proportionately if it accepts it. In that case, as Mr B would have paid 80% of the premium costs without the tracker endorsement, he should be paid 80% of any claim.

Therefore, I'm satisfied Accelerant unfairly declined Mr B's claim. And – as CIDRA reflects our long-established approach to misrepresentation cases, I think requiring Accelerant to rely on it consider Mr B's claim produces the fair and reasonable outcome in this complaint.

Mr B has been caused considerable trouble and upset by having his claim unfairly declined. Our Investigator recommended that Accelerant should pay him £300 compensation for this. I think that's in keeping with our published guidance for the impact caused and so it's fair and reasonable.

Putting things right

I require Accelerant Insurance Europe SA/NV to do the following:

1. Consider Mr B's claim in keeping with the new terms of contract had it known Mr B didn't have a tracker.
2. Settle the claim proportionately based on the amount of premium paid compared to what should have been paid.
3. Pay Mr B £300 compensation for the distress and inconvenience caused by it unfairly declining his claim.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require Accelerant Insurance Europe SA/NV to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 February 2024.

Phillip Berechree
Ombudsman