

The complaint

Mr H has complained that One Insurance Limited (OIL) avoided (treated it as if it never existed) his motor insurance policy and refused to pay his claim.

What happened

Mr H renewed his motor insurance policy with OIL through a broker. When his car was damaged whilst being driven by the named driver, he tried to claim on his policy.

OIL declined his claim, avoided his policy but said it would reimburse the premiums he'd already paid. When Mr H complained, it said he hadn't disclosed that his Full UK Driving Licence had been changed for an EEC Driving Licence after the renewal. And it considered this to be a careless qualifying misrepresentation, which entitled it to avoid his policy and refuse his claim.

Mr H brought his complaint to us, and our Investigator thought it should be upheld. She thought OIL hadn't done enough to bring to Mr H's attention that he needed to inform it of any material changes that affected his driving licence. But she thought Mr H should have brought the change to OIL's notice as it was a change in what was stated on the Policy Schedule. However, she didn't think this changed the risk that OIL was insuring. And, in any case, the named driver was driving at the time of the accident.

So she thought it was unfair for OIL to avoid the policy and decline the claim. She thought OIL should remove records of the avoidance, reimburse Mr H's recovery and repair costs with interest, refund the premiums due after the avoidance with interest, and pay Mr H £600 compensation for the trouble and upset caused and the effect on his premiums.

OIL doesn't agree with the Investigator and has asked for an Ombudsman's decision. It thought the broker's policy wording required Mr H to notify it of any changes to his licence. It said it wouldn't have continued cover if it had been told about the change. And it thought this was an impact on its risk. It also questioned Mr H's residency. Mr H replied that he hadn't received the refund of premium.

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 by OIL's decision to void his policy. He said this had left him without transport and he'd relied upon the kindness of others. He had to pay for his car to be recovered and repaired. And now he has had to pay £600 more to obtain insurance. I was sorry to hear about this and the stress he is experiencing.

OIL made its decision to void the policy and decline the claim based on The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out or varying a consumer insurance contract (a policy). There's no ongoing duty for the consumer to advise an insurer of any changes in their circumstances once the contract begins. However, insurers will generally add a policy condition requiring them to do so.

I've looked at the information the broker sent to Mr H before renewal. This asked Mr H to tell it of any changes in his circumstances or any material information that had changed in the previous year. A list of examples of material information that should be disclosed is provided. This includes a change in any of the facts on the Statement of Facts form. And on this form Mr H is stated to have a Full Licence.

But at renewal, Mr H still had a Full UK Driving Licence. And so I can't say that Mr H then misrepresented this to OIL.

Mr H's policy's terms and conditions document states in Section 12 General Conditions that he should:

"...tell us as soon as possible about any changes that have happened since the insurance started (or was renewed) that might make us change our mind about your insurance."

Examples of the changes are provided, but there's no reference to driving licence changes. However, Mr H was also advised to tell OIL about any changes if he was unsure. Mr H has explained that he was required by a European country to exchange his UK licence for an EEC one. This is an important change as the information forms part of his Statement of Facts. So I think Mr H should have contacted OIL about this. OIL said that if he had, then it would have declined cover and so it applied the remedies available under CIDRA.

But, under CIDRA, a consumer can only fail to take reasonable care not to make a misrepresentation about a change after the policy has started if they actually contact the insurer to tell them about the change. If they don't do this the insurer won't have the remedies in CIDRA available to them. So I don't think Mr H failing to tell OIL about the change in his licence is a fair reason for it rely on CIDRA to void his policy and decline his claim.

I've then thought about whether it was fair for OIL to cancel the policy and decline the claim because Mr H hadn't told it about the change in his driving licence mid-term. The duty of disclosure, as included in Mr H's policy, is often referred to as a change in risk clause.

Our approach is that we might not necessarily consider the insurer's application of these clauses to be fair and reasonable in all circumstances because by issuing a policy, the insurer has effectively promised to cover the consumer against certain contingencies. And in many cases, if the consumer's circumstances change during the term of the policy, that is generally just part of the risk the insurer agreed to take on. So for *non-fundamental* changes we would not normally expect the insurer to then change their mind about what cover, if any, they will provide.

So I've considered whether the change in driving licence was a fundamental change in risk in Mr H's particular circumstances. Mr H has explained that he held his Full UK licence for 50 years. I'm not persuaded that changing this for an EEC Driving Licence increases the risk of loss or damage for OIL. So I don't think this is a fundamental change in risk.

OIL said it wouldn't have continued cover if the change had been disclosed, but I don't think this is relevant as the change wasn't disclosed and I'm not persuaded that there was a fundamental change in risk. OIL also questioned Mr H's residency. But this wasn't the reason why it voided his policy, so I won't consider that further.

So I think it would be unfair and unreasonable for OIL to rely on the change in licence to void Mr H's policy and decline his claim. And I think it should remove any record of the avoidance and reimburse Mr H for the costs of the claim (£450 recovery and repair charges). As Mr H has been without his money for some time, I think OIL should add interest to this amount. OIL should also refund the premiums due since the date of avoidance, with interest. And it should pay Mr H £600 compensation for the trouble and upset caused as he has had to pay higher premiums after disclosing the avoidance.

Putting things right

I require One Insurance Limited to do the following:

1. Remove all record of the policy's avoidance/cancellation from internal and external insurance databases.
2. Reimburse Mr H the amount he has paid to recover the car and to have the repairs carried out on the car, adding interest to this amount at the rate of 8% simple from the date of payment to the date of settlement†.
3. Refund the premiums that were due after avoidance of the policy, adding interest to this amount at the rate of 8% simple from the date of avoidance to the date of settlement†.
4. Pay Mr H £600 compensation for the distress and inconvenience caused by the unfair avoidance of his policy and the impact this has had on his premiums.

†If One Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require One Insurance Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 April 2024.

Phillip Berechree
Ombudsman