

The complaint

Mr P has complained about Highway Insurance Company Limited (Highway)'s decision to cancel his motorbike insurance policy.

What happened

Mr P bought a motorbike insurance policy through a broker. He changed his motorbike and contacted the broker. The broker explained that Mr P's current insurer didn't offer cover for the new motorbike. They were able to arrange an alternative policy with Highway.

Shortly after the new policy started, Highway discovered an undisclosed claim. Through the broker, it asked Mr P to provide details. On receiving his response, Highway said if it had known about the undisclosed claim as well as another claim that was disclosed, it wouldn't have offered a policy to Mr P. So it gave notice to Mr P that it intended to cancel his policy, and cancelled it around a week later.

Mr P said having to disclose a cancellation by an insurer when looking for alternative insurance has had a negative impact. He said the broker was aware of both claims – and he believes both Highway and the broker are at fault and his policy shouldn't have been cancelled.

The broker didn't uphold Mr P's complaint. So Mr P asked us to look at his complaint. As Highway was the insurer which instructed the cancellation, we set up our case against Highway.

Highway said it agreed with the final response letter provided by the broker on its behalf. It said it had correctly cancelled the policy.

Our Investigator didn't recommend upholding the complaint. He thought Highway had acted reasonably, in line with the policy and in line with the law about misrepresentation.

The Investigator explained that the outcome was more favourable to Mr P than if Highway had avoided the policy (treating it as if it never existed). He said this was because Highway had given Mr P notice – so he had time to look for alternative insurance elsewhere.

Mr P didn't agree. In summary he believes the outcome is harsh. He said the broker was aware of his claims history. He didn't act dishonestly. If Highway treated the policy as if it never existed, surely this would be a more favourable outcome as he wouldn't need to declare it to future insurers as a cancellation.

So Mr P wants an ombudsman to decide.

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.

Although Highway hasn't applied the law that deals with misrepresentation in reaching its decision, I think it's useful to briefly set out what that law is when considering whether Highway has acted reasonably.

The Consumer Insurance (Disclosure and Representations) Act 2012 (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.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

In summary, where a qualifying misrepresentation occurs, and an insurer shows it wouldn't have offered a policy, it can avoid the policy. Misrepresentation can be categorised as either careless, or deliberate or reckless. The considerations are less favourable for a customer if it is found that the misrepresentation was deliberate or reckless.

I've listened to the key call where Mr P contacted the broker to change the details of his motorbike. Mr P has also listened to the call.

The agent asked Mr P the following before arranging alternative cover:

"Are there any claims, losses, criminal or motoring convictions, including any fixed penalty endorsements or anything pending that we need to be made aware of."

Mr P says he has listened to the call a number of times, and he doesn't think it was clear. He interpreted the question asked of him as whether he had any of the above as pending. On this understanding, Mr P says he answered the question correctly.

I appreciate that the agent was speaking quickly when he asked the question. However, if Mr P was unsure of the question, I think it's reasonable for him to have asked the agent to repeat it. Mr P answered the question 'no'.

Mr P had two previous claims. One in 2020 and one in 2021. The broker was aware of the claim from 2020 from arranging a previous policy – and so this was automatically transferred over to the new policy, even though Mr P hadn't disclosed it. But the broker wasn't aware of the claim in 2021.

When asked about the undisclosed claim, Mr P told the broker the 2021 claim was for misfuelling a vehicle. He said he intended to contact the insurer about that claim. The broker said that if Mr P came back to it with any change to the claim details, it would consider any changes.

I think Mr P failed to take reasonable care when answering this question. From the response he gave the broker, it seems he was reasonably aware of the claims - but answered 'no' to a clear question asked about them.

Highway has provided evidence to show that if it had known about the 2021 claim as well as the 2020 claim, it wouldn't have offered Mr P a policy. An insurer's underwriting criteria is commercially sensitive and so cannot be shared. But we can ask an insurer to provide us with this evidence to show it has treated a customer fairly. Having reviewed this evidence, I'm satisfied Highway has treated Mr P fairly and as it would any other customer in the same circumstances.

This means that in line with CIDRA, the misrepresentation Mr P made was a qualifying one.

All parties agree that the qualifying misrepresentation wasn't deliberate or reckless, but careless. So I don't have any further comment to make here.

I've looked at the actions Highway took. Whether Highway cancelled Mr P's policy or avoided it, both are treated as a cancellation by an insurer. The Investigator's point about being a more favourable outcome was in relation to Mr P being given reasonable notice to arrange alternative cover.

I understand Mr P doesn't agree with Highway's decision. But I'm satisfied Highway was entitled to avoid Mr P's policy in accordance with CIDRA. As CIDRA reflects our long-established approach to misrepresentation cases, I think Highway's decision to cancel the policy produces the fair and reasonable outcome in this complaint.

My final decision

I'm sorry to disappoint Mr P. But for the reasons I've given 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 P to accept or reject my decision before 16 April 2024.

Geraldine Newbold
Ombudsman