

The complaint

Mr L complains about AA Underwriting Insurance Company Limited (“AAIC”) and their decision to void his policy after he contacted them to make a claim.

Mr L has been represented by Mr B during the claim and complaint process. For ease of reference, I will refer to any actions taken, or comments made, by either Mr L or Mr B as “Mr L” throughout the decision.

What happened

The claim and complaint circumstances are well known to both parties, so I don’t intend to list them chronologically in detail. But to summarise, Mr L held a motor insurance policy underwritten by AAIC for several years. And, in the years before Mr L made a claim, the policy was set up to automatically renew. Mr L’s most recent policy automatically renewed in July 2023.

In August 2023, Mr L’s car was stolen. So, he contacted AAIC to make a claim on this policy. But when AAIC were validating the claim, they discovered Mr L had received a motoring conviction in July 2022, which hadn’t been declared at the point of renewal. So AAIC voided the policy from the point of renewal and declined the claim, explaining they wouldn’t have provided cover had the conviction been declared. Mr L was unhappy about this, so he raised a complaint.

Mr L didn’t think AAIC’s decision to void the policy was a fair one, considering the policy automatically renewed and the wording of the renewal documentation they sent. So, considering this and the circumstances of the motoring conviction he received, he wanted AAIC to reverse the policy voidance and pay his claim.

AAIC responded to the complaint and didn’t uphold it. They were satisfied they acted fairly, and in line with industry guidelines and legislation, when voiding the policy as they had. So, while they empathised with Mr L’s situation, they didn’t think they needed to do anything more. Mr L remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and didn’t uphold it. They explained they had considered The Consumer Insurance (Disclosure and Representations) Act 2012 (“CIDRA”) when considering the complaint, as this sets out the actions an insurer can take when they feel a customer has misrepresented at the inception of a policy. And having done so, they thought the actions AAIC had taken, including declining the claim, were fair and in line with the terms of CIDRA. So, they didn’t think AAIC needed to do anything more.

Mr L didn’t agree, providing a detailed reply setting out why he didn’t think AAIC had treated him fairly when reaching this decision. This included, and is not limited to, his belief that there was a lack of clarity within the renewal documentation that set out what he needed to disclose and specifically in relation to motoring convictions, what the consequences may be. Our investigator considered Mr L’s comments, but their opinion remained unchanged. Mr L continued to disagree and so, the complaint has been passed to me for a 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.

Having done so, I'm not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Mr L. I recognise due to the policy voidance and claim decline, he was effectively left without a car and any form of payment to replace it. And I can appreciate the distress and inconvenience this would've caused. I also recognise the circumstances of Mr L's motoring conviction, and I don't dispute that Mr L's failure to disclose this at a renewal was an innocent mistake, rather than anything more callous. So, considering all the above, I can understand why Mr L feels unfairly treated and that AAIC should reverse the decision they reached.

But for me to say AAIC should do something differently, such as retract the policy voidance and accept the claim, I first need to be satisfied they've done something wrong. In this situation, AAIC have deemed Mr L to have misrepresented the information provided to them at the policy renewal. So, I've considered this determination and the actions AAIC have taken against the rules set out in CIDRA, to decide if I think a mistake has been made.

Under the rules of CIDRA, I first need to consider whether a misrepresentation has taken place. In this situation, Mr L hasn't disputed he had a motoring conviction and three points on his license when his policy was renewed. Nor does he dispute that this information wasn't provided to AAIC. I've seen in an e-mail from Mr L to AAIC sent on 14 August 2023 where he states not making AAIC aware of this was an *"oversight on my part when receiving the renewal notice"*. So, I do think it's accepted that the information contained within his policy following its renewal was incorrect.

But Mr L has set out why he doesn't think it was made clear to him what information he needed to disclose, and the consequences of any failure to do so. And for me to say a qualifying misrepresentation has taken place, I also need to be satisfied that Mr L was asked for certain information clearly, and fairly.

I've seen the renewal notice sent to Mr L on 27 June 2023, a month before the policy was due to automatically renew and crucially, almost a year after he'd received a motoring conviction and three points. Within this notice, I can see on the first page of the letter it asks Mr L to *"check that we have accurate and up to date information – it's important all the details we hold about you and your cover are correct"* before providing very clear instruction on how he could update this information if required.

On the following page, under the section titled *"Important Renewal Information"* it states *"Your Statement of Insurance confirms all of the details we hold about you and your cover. Please ensure that all of the information it contains is complete, accurate and up to date"*.

On the same page, under the *"Check your details and your cover"* section it then states *"Please check the enclosed Statement of Insurance and let us know as soon as possible if you need to make a change to your cover or if your details are incorrect or missing. Failure to do so may result in your insurance being cancelled or a claim not being paid."*

So, based on the above, I think AAIC made it reasonably clear, within a reasonable time period before the policy was due to renew, that Mr L needed to ensure the information

included in his Statement of Insurance was correct. And, what potential consequences may arise should this not be the case.

I've then turned to Statement of Insurance, which was sent alongside the renewal notice quoted above, to see what information it included and more importantly, what questions it asked. And I can see under the section titled *"About the Declarations of The Driver(s)"* it asks the following question:

"Have you or any person who will drive ever been convicted (or have any pending prosecutions) for motoring offences or received any endorsable fixed penalty notices – in the last 5 years?"

And I can see the answer to this question was listed as "No", which I note is accepted was incorrect at the time the renewal notices were sent, and when the renewal was automatically processed.

So, I'm satisfied AAIC did clearly and fairly ask for information regarding Mr L's previous motoring convictions. And, by Mr L not making AAIC aware of his conviction, he failed to take reasonable care to ensure he provided all the relevant and necessary information correctly. And at the point of any renewal, whether it be automatic or manual, the onus is on a customer, and so in this case Mr L, to ensure this information is correct. So, I do think the misrepresentation is a qualifying one.

I've then thought about what I think AAIC would've done, had Mr L provided the correct information. And I've seen AAIC's underwriting criteria, which states explicitly that they will not provide cover to any driver who has a motoring conviction with this same classification as Mr L's. So, I'm satisfied Mr L's misrepresentation made a material difference on this occasion.

Because of this, I've then turned to the actions AAIC are able to take where a qualifying misrepresentation has been made that materially impacts their decision to offer the policy. And this differs slightly based on whether an insurer feels a customer has acted carelessly, or recklessly and deliberately.

In this situation, I can see AAIC have deemed Mr L's misrepresentation to be careless, rather than reckless or deliberate. So, in this situation, AAIC are entitled to avoid the policy to the point of policy inception and refuse all claims. And this is what they've done here. So, I don't think I can say they've acted erroneously, or unfairly, when doing so.

And in this situation, we would also expect any premiums paid by a customer for the voided policy to be returned. But I note in this situation, as Mr L had opted to pay his premium monthly and due to the time between the inception and the car theft, a payment hadn't been taken. So, I'm satisfied no refund was required here.

So, based on all of the above, I don't think AAIC have done anything wrong, or acted unfairly, when taking the actions they have on this occasion. And because of this, I don't think they need to do anything more.

I understand this isn't the outcome Mr L was hoping for. And I want to reassure Mr L I've considered all the points he's made, including his reference to the industry legislation and why he doesn't think AAIC's actions were fair and what information he thinks AAIC should've included within the renewal documentation.

But I want to make it clear to Mr L that, when deciding this complaint, I've looked at and carefully considered all the relevant legislation at the time. And having done so, because of

all the reasons I've set out above, I'm satisfied AAIC's communication and correspondence was clear, fair and not misleading. And this is what I'd expect to see. I don't think there was any information withheld from the documentation that I would've expected AAIC to have included, in line with the rules and regulations in place at the time the renewal information was sent. So, these comments haven't impacted the decision I've reached on this occasion.

My final decision

For the reasons outlined above, I don't uphold Mr L's complaint about AA Underwriting Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 30 April 2024.

Josh Haskey
Ombudsman