DRN-4782374

The complaint

Mr I complains MS Amlin Insurance SE ("MS") unfairly avoided (treated it as though it never existed) his marine insurance policy and as a result declined his theft claim for a boat. Any reference to MS also includes its agents.

What happened

In 2021 Mr I took out insurance with MS for a boat he'd purchased and carried out some renovation to. In 2023 the outboard motor ('engine') on Mr I's boat was stolen, causing damage to the vessel. He made a claim on his MS insurance policy to replace the engine and fix the damage caused.

MS reviewed the claim but declined it and avoided his policy. It said Mr I had made a misrepresentation when taking out the insurance around the purchase price of the boat. It said if Mr I had given the actual purchase price, it would have asked him to provide a condition survey or a valuation before deciding to accept the risk. As this wasn't done, MS said it was entitled to avoid the contract as it was written under a false pretence. It also said under the relevant law - the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) - it considered Mr I's misrepresentation to be deliberate. So it kept Mr I's premium.

Mr I complained to MS, he said he wasn't claiming for the total cost of the boat, so his claim should be paid. MS didn't agree to change its position. It did offer to pay £150 compensation for delays in handing the claim. Unhappy with MS' response, Mr I brought his complaint to the Financial Ombudsman Service. He said when inputting the purchase price, he'd taken into account that he'd carried out renovations to the vessel since his purchase.

Our Investigator thought Mr I had made a qualifying misrepresentation under CIDRA. So she thought MS had acted fairly in declining the claim and avoiding the policy. But she thought the misrepresentation had been a careless one, rather than a reckless or deliberate one. So she recommended MS refund the policy premiums Mr I had paid.

Mr I said he accepted that the misrepresentation was careless, but he didn't accept that MS didn't have to pay the claim. He said the only thing that MS could have changed is the premium, because it would have still covered him if he'd provided a valuation.

He said his claim only related to the engine theft and resultant damage to the vessel. He said he had provided correct information about the engine valuation so it should pay the claim for the engine. He also said he had a previous windscreen claim paid out in 2022 and the policy was the same, so MS cannot treat it as though it didn't exist.

MS initially indicated it would accept the Investigator's outcome, but then said it wouldn't accept the misrepresentation as being recategorised as careless. So it asked for an Ombudsman to review the matter.

As the matter hasn't been resolved, it has come to me to decide.

In April 2024, I issued a provisional decision on this complaint. I have copied what I said below.

As this is an informal service, I'm not going to respond to every point or piece of

evidence Mr I and MS have provided. Instead, I've focused on those I consider to be key to determining the complaint. But I would like to assure them I have considered everything provided.

The first and key thing for me to consider is if it would be fair, because of misrepresentation, for MS to avoid Mr I's policy and to decline any claims.

As Mr I is a consumer, the relevant legislation for me to consider is CIDRA. A policyholder's mistake or failure to answer an insurer's question when applying for a policy is known in the insurance industry as a misrepresentation. CIDRA requires a prospective policyholder to take reasonable care to not make any misrepresentation to the insurer when applying for cover. An insurer can take certain action, like avoiding a policy, if a 'qualifying misrepresentation' has been made in line with CIDRA.

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.

MS says Mr I made a misrepresentation about the purchase price of the boat. When taking out insurance in 2021, he was asked to confirm 'total purchase price of craft and other insured items'. Mr I said £45,000. MS said that was wrong because he actually purchased the vessel for £7,500 in 2020.

When asked why he'd listed the purchase price at £45,000, Mr I said he bought the boat as a renovation project, without an engine. He said the engine was bought separately, in 2020, for around €17,000, and he'd also purchased other items whilst refurbishing the boat. He said as a qualified engineer, he did much of the work himself, so he didn't have any invoices or receipts for the work, but he'd put lots of hours of labour in. He also said he wasn't claiming for the value of the whole boat, just the engine.

I can understand Mr I bought other items before insuring the boat. So I might consider it reasonable that he also included those amounts when answering about the purchase price, given the question asked for the total purchase price of items he wanted to insure. However even with that in mind, if Mr I had included those items then it seems the purchase price should have been listed at around £27,000, based on what he's reasonably evidence as having done to the boat. Given the exchange rate from Euros to Sterling for the engine, its difficult to be certain it would have been exactly the above figure, but this seems to be the figure also accepted by MS in its review of the claim. In any event, this is considerably different to the £45,000 he inputted when taking out the policy. So it's fair for MS to say there has been a misrepresentation.

For MS to take any action, like avoiding the policy and declining a claim, there would need to be a 'qualifying misrepresentation'. So it first needs to be shown that Mr I failed to take reasonable care not to make the misrepresentation.

CIDRA sets out several things to be considered when deciding if a consumer took reasonable care not to make a misrepresentation. One is how specific and clear the questions asked were. Another is any relevant explanatory material provided with the questions.

The question is clear enough. I haven't been provided with any explanatory notes Mr I would have seen, but the question asks the total purchase price, not how much Mr I has spent on it, or its value. The value of the items had to be inputted separately when taking out the policy. I note English may not be Mr I's first language, but I still consider a reasonable consumer would have understood the question was asking what he had paid for the vessel he was insuring. There's no evidence he sought any clarification on the question, and he hasn't provided a reasonable explanation, noting what I've said above about the likely price if renovation works were included, why he thought £45,000 was the correct answer. Having

considered everything, I don't think he can reasonably say he purchased it for £45,000. So I think it's fair to say Mr I failed to take reasonable care not to make a misrepresentation.

The next consideration in a deciding if the misrepresentation was a qualifying one is whether MS can show it would have acted differently, had Mr I not made a misrepresentation. MS has provided a screenshot of the online site Mr I took the policy out through. It shows if Mr I had listed the purchase price at £7,500 (or even the £27,000 I've noted above) with the same sum insured of £45,000, cover would have been automatically declined, given the difference between the sum insured requested and the purchase price.

MS said, its complaint response, that it would have asked Mr I to carry out a valuation if he'd listed the accurate prices. And this is supported by its underwriting criteria. However, whilst the underwriting criteria is very important, under CIDRA, MS needs to show something different would have happened, if Mr I hadn't made the misrepresentation. And overall, I'm minded to say it has done that. Because it has shown, on the online system Mr I took out the policy through, that cover would have been declined if Mr I had answered accurately. So even though MS' underwriters would have taken a closer look if approached directly, I ultimately consider that it has shown it would have done something different given how the policy was taken out. So I'm satisfied it's shown a qualifying misrepresentation has happened.

The remedy then available to MS depends on whether the misrepresentation was reckless or deliberate, or careless.

MS say this was a deliberate misrepresentation. CIDRA says a misrepresentation is deliberate or reckless if the consumer –

> *(a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and*
>
> *(b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.*

CIDRA also says it is for MS to show the misrepresentation was deliberate or reckless. MS has said it considers Mr I deliberately misrepresented the purchase price because he knew it was not true. It said despite his potentially limited English, there was no suggestion he didn't understand the question and the question isn't ambiguous. It said the statement of fact makes clear that 'the information supplied forms the basis of this legal contract between us, you must therefore ensure that it is accurate'. It also says the policy document confirms 'if the information you have provided about the value of the vessel (including the price you bought it for) is false your insurance cover may not be valid and we may refuse to pay your claim'.

It also said in 2022, Mr I listed the boat for sale and he advertised the price as being £26,500. It said this shows he would have known that the purchase price wasn't £45,000 when he bought the vessel.

Having looked at the wording of CIDRA, and the comments made by Mr I, I'm more persuaded, at this stage, that his misrepresentation was reckless rather than deliberate. However, whether it is deliberate or reckless is immaterial to the remedy MS has, as under CIDRA the remedy for both is the same.

In Mr I's responses to questions posed by MS, he doesn't seem to care whether or not the purchase price was relevant to the insurer. He maintains that because his claim is for the engine only, the claim should be paid. And he hasn't given a reasonable explanation as to why he listed the purchase price at £45,000 or tried to evidence the money he'd spent on the boat. He's said items were paid for in cash with no receipts kept and hasn't provided bank

statements to support any cash withdrawals. To me this shows he didn't care whether or not the purchase price would be a consideration for the insurer when taking out the policy.

Whilst the statement of fact and policy documents would have been sent to Mr I after the sale, there is a responsibility on him to read them. There's nothing to suggest that having received the documents, he contacted MS to clarify what he'd meant by purchase price or check he hadn't made an error, given the purchase price was explained as being very important and was listed on his policy schedule. I'm minded to think all of the above points to a reckless misrepresentation. But as set out above, as the remedy for deliberate and reckless misrepresentations are the same, in practical terms I consider it means the same thing.

And so, under CIDRA, MS is entitled to decline the claim, avoid the policy and retain the policy premium.

Mr I says this is unfair because MS hasn't shown it wouldn't have offered him cover at all, and the impact might only have been to his premiums. However where an insurer has shown that a deliberate or reckless misrepresentation has taken place, it is entitled to avoid the policy, even if it would have offered cover, at a different price, had the misrepresentation not taken place.

CIDRA does say that MS need not return the premiums except where it would be unfair to the consumer – so Mr I – to keep them. CIRDA doesn't set out in what circumstances it would consider it unfair to keep the premium. MS' decision has been to retain the premium Mr I paid, having considered everything I'm not going to interfere with its decision to do so. Mr I has said he's made a previous successful claim on the policy, before the misrepresentation was discovered. And so I don't consider it would be fair to ask MS to return any premiums to him.

I know Mr I thinks that previous claim should prevent MS from avoiding the policy to its start date. But small claims like that for windscreens are often settled without question – which is because the insurer is entitled to rely on the information given when the policy was arranged as being correct. However, if an insurer later discovers it was misled when the policy was arranged, CIDRA sets out what can be done, and as I've found here, MS acted fairly and reasonably in-line with CIDRA.

I understand MS has offered £150 compensation for a delay in providing the claim decision. I'm not going to interfere with its decision to award for this. It isn't clear if this has already been paid to Mr I or not. If Mr I wants to accept this amount he should contact MS directly.

My provisional decision

My provisional decision is that I don't uphold this complaint.

Responses to my provisional decision

Neither party provided any response to my 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 neither party has responded to my provisional decision and there's no further evidence for me to consider, I see no reason to depart from the findings I reached in my provisional decision. So my final decision is that I don't uphold this complaint, for the same reasons as set out in my provisional decision.

My final decision

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 I to accept or reject my decision before 4 June 2024.

Michelle Henderson
Ombudsman