

The complaint

Miss F complains Covea Insurance plc unfairly avoided her commercial vehicle insurance policy (treated it as though it had never existed) and, by association, declined her claim.

Miss F is being represented in bringing this complaint, but for ease I've referred to all comments as being Miss F's own.

What happened

Miss F took out commercial vehicle insurance for her van through a price comparison website. In June 2023 she made a claim after the van was stolen. Covea made enquiries and decided to avoid her policy, and therefore refuse the claim. It said Miss F had misrepresented the van when she took out the insurance. It said she hadn't declared that it was a campervan, as she should have. It considered this to be a reckless misrepresentation, and it said that had Miss F disclosed what her van was, it wouldn't have offered her cover. So it avoided the policy, refused the claim and retained the insurance premium she'd paid.

Miss F complained, she said she'd made a mistake when taking out the insurance and ticked the wrong box. She said she'd never set out to deliberately deceive anyone and having an avoidance on her record will financially impact her going forward. Covea didn't change its position and so Miss F brought her complaint to the Financial Ombudsman Service.

Our Investigator was satisfied Miss F had made a misrepresentation, but she thought it should have been considered a careless one. She didn't think Covea had shown Miss F was reckless. On this basis, the Investigator said Covea could avoid the policy and decline the claim, but it should return any premiums Miss F had paid. She said it should also change how it had recorded the misrepresentation on any internal or external databases, to reflect that it was careless.

Miss F asked whether this meant she'd still have to disclose it when taking out future policies. But she didn't say whether or not she accepted the outcome.

Covea didn't accept the outcome the Investigator reached. It said it was satisfied Miss F was aware the van had been modified into a camper van and the question it asked was clear. So her misrepresentation must have been reckless.

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.

Like our Investigator, I consider it fair to apply the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). Whilst the policy taken out was a commercial one, I'm satisfied Miss F is a consumer entering into the contract for reasons unrelated to her trade or profession. It is worth noting though, that even if I considered matters under the Insurance Act 2015 (which applies to commercial contracts) I'd reach the same outcome.

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 consumers to take reasonable care not to make a misrepresentation when taking out a policy. The standard of care is that of a reasonable consumer.

And if a consumer – so in this case Miss F – 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.

Covea says Miss F failed to take reasonable care not to make a misrepresentation when answering a question about the van's body type. It said Miss F answered this question as 'van', which was incorrect, as it is a campervan.

I've looked at the question that was asked when Miss F was taking out the policy. There were a few questions relating to the van. One of them was "*how would you describe the van's body type?*" Miss F had to select from a list of drop downs, which included things like an ice cream van and a milk float. One of the options was "*other*" and an explanatory note said "*please use other if you can't find your body type. If your vehicle is a motorhome/campervan, or a caravan, please use our dedicated comparison services*".

Miss F selected "*van*," but Covea says that's incorrect as it was actually a modified campervan. Miss F said she accidentally didn't tick a box relating to it being a campervan, but the question asked her to describe the body type. There wasn't an option to select a campervan. And I'm satisfied that describing it as a "*van*" isn't an accurate representation of what it was.

I'm unsure if the explanatory note was readily available, or whether Miss F would have had to expand on it to read it. But in the circumstances of this case, I don't think that matters to the outcome, as Miss F was also asked "*has the van been modified in any way?*". Miss F declared that it had parking sensors installed, but not that a window had been added, and that a bathroom and solar panels had been installed. Covea said these modifications should have been declared. Miss F says she didn't realise these would need to be disclosed as she'd accurately recorded the vehicle on her V5 document as a motor caravan. So she considered it hadn't been modified from a motor caravan, and so it didn't need to be declared.

Covea hasn't provided any explanatory notes that accompanied that question. But I'm satisfied based on what Miss F said she knew of the vehicle's history, that she knew modifications had been made to the van, and she should have declared these. And so I find she failed to take reasonable care not to make a misrepresentation.

However, Covea is only entitled to take action, such as avoiding the policy, if it can show the misrepresentation was a qualifying one, i.e., if it can show it would have acted differently.

I've seen Covea's underwriting criteria, it says a campervan conversion would be declined for cover. And given the explanatory note that says campervan cover needs to be sought elsewhere, I'm satisfied Covea didn't intend to offer cover for Miss F's vehicle and wouldn't have done so had she declared the modifications. So I'm satisfied the misrepresentation was a qualifying one.

Covea has said this was a reckless misrepresentation because Miss F was fully aware of the van being a campervan, and she'd bought it as such. Miss F says as her V5 document was accurate, she didn't realise Covea wouldn't check the type of vehicle against this document before accepting the insurance. She said it was a mistake not to declare it as a campervan. On the modifications, she said she's declared parking sensors, and so would have declared other modifications if she'd realised she needed to. But as she thought the vehicle would be recorded – from the V5 – as a motorcaravan, no modifications would apply. I've considered

Covea's comments, but I'm not satisfied it has shown, on balance, that Miss F acted recklessly.

I'm not persuaded that Miss F knew she was providing untrue information or didn't care whether it was untrue. The vehicle was a van (which had been modified), I can see why she described it as a van when taking out the policy. Although I'm satisfied this was a misrepresentation – as set out above – I'm not persuaded she deliberately or recklessly obtained the insurance. I consider her actions to have been careless, in that she didn't properly check what she was selecting, and the notes that accompanied the relevant questions.

This means I'm satisfied Miss F's misrepresentation was a careless one. So the action available to Covea, under CIDRA, is for it to avoid the policy – this means treat it as if it had never existed. Covea does not have to deal with the theft claim of the campervan. But it must refund Miss F the premium she paid for the policy. And as Miss F has unfairly been without that refund, as is our standard redress, Covea should add 8% simple interest on the amount, from the date of its avoidance letter, until the date of settlement.

Miss F has asked if recording the avoidance of the policy as careless, means her future premiums won't be impacted as much as declaring a reckless misrepresentation. I don't think it would be appropriate, as a complaints body, for me to give advice on that. Miss F will need to speak to an insurance broker, or insurer to gain more information about what she needs to declare and the impact it might have.

Miss F said she'd accept not having the claim paid but asked whether the insurance can be cancelled in a way so that she doesn't have to declare it. I'm not satisfied it would be fair or reasonable to ask Covea not to record this as a policy avoidance. To be clear to Miss F, I think the language used by Covea has been 'voided' but this means the same thing as avoidance.

Covea should record the misrepresentation, and avoidance, as 'careless' on any internal or external databases. But whether this impacts what Miss F has to disclose in future I cannot give advice on.

My final decision

My final decision is that I direct Covea Insurance plc to record the policy avoidance as a result of a careless misrepresentation on any internal and external databases.

Covea Insurance plc also needs to return the premium Miss F paid, plus 8% simple interest, from the date of its avoidance letter to the date of settlement.

If Covea Insurance plc considered that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss F how much it's taken off. It should also give Miss F a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 17 July 2024.

Michelle Henderson
Ombudsman