

The complaint

Mr W complains that Premier Insurance Company Limited (Premier) unfairly avoided his motor insurance policy (treated it like it never existed) and refused to pay his claim.

What happened

Mr W took out a motor insurance policy with Premier through an intermediary. The policy renewed in July 2023.

When Mr W accidentally hit a bollard and his car was damaged, he tried to make a claim on his motor insurance policy. Initially Premier advised his car would be a total loss and gave him the details of the settlement amount due. Then during the claim validation process Premier found the named driver on his policy had a motoring offence (SP30) dated February 2022 which had resulted in three penalty points on their driving licence. This information had not been disclosed by Mr W when the policy was taken out.

Premier said in accordance with its underwriting criteria had it known this information it would not have issued him with a policy.

It avoided his policy from the date it commenced and returned the premium he'd already paid. His claim was not settled.

Mr W brought his complaint to us, and our investigator thought it should be upheld. They agreed there had been a qualifying misrepresentation. But didn't think this was deliberate or reckless. They believed it was careless. They said Premier should reinstate the policy without the named driver being included and consider Mr W's claim.

Premier doesn't agree with the investigator and has asked for an ombudsman's decision. It said it would not have offered the policy to Mr W with him as the only driver, and it had provided information to support this decision.

What I provisionally said

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This 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.

Premier thinks Mr W failed to take reasonable care not to make a misrepresentation when he failed to disclose the motoring conviction of the named driver included on his policy. It said Mr W was provided with a policy on a scheme that it only offered where all drivers are totally free of motoring convictions, endorsements, fixed penalty notices etc for a period of three years prior to the policy inception.

Mr W said his failure to disclose the named driver's conviction was a genuine mistake as he was not aware of it. He said the named driver rarely drove the car and was not driving at the time of the accident.

Mr W is responsible for the accuracy of the information he submitted in his application for the motor insurance policy and therefore I do not think he took reasonable care.

Premier said had the named driver's conviction been disclosed it would not have quoted for the policy. It considered this to be a qualifying misrepresentation, which entitled it to avoid his policy and decline his claim.

Premier said it understood the policy was an automatic renewal, but it was Mr W's responsibility to review the renewal documents to make sure the information was up to date and correct. It said he had the opportunity to contact it prior to the incident to update the policy. It said he was issued with a renewal letter which stated the following on the front page;

"It is important that the information you provide throughout the quote and duration of the policy is accurate. Failure to disclose correct and complete information to the best of your knowledge and belief may result in increased premiums, refusal of a claim or not being fully paid, your policy being cancelled or being made null & void and treated as if it never existed."

I am satisfied Mr W's misrepresentation was a qualifying one.

As Premier avoided Mr W's policy and returned the premiums he had already paid, it appears it treated the misrepresentation as careless rather than being reckless or deliberate. I agree his misrepresentation was careless. He did not deliberately avoid disclosing the named driver's conviction.

As I'm satisfied Mr W's misrepresentation should be treated as careless I've looked at the actions Premier can take in accordance with CIDRA.

Under CIDRA if the misrepresentation was careless, as in this case, the insurer can only avoid the contract if it wouldn't have offered it on any terms.

Where insurers take an action under CIDRA based on a misrepresentation about a named driver on the policy, we often don't think this is fair. So if Premier would have not insured the named driver, but would have still insured Mr W, it can't avoid the policy, and instead should amend the terms by removing the named driver from cover.

However, Premier provided evidence by way of its underwriting criteria which showed it would not offer a policy for anyone with a motoring conviction and it also provided evidence that it would not offer a policy to Mr W with only himself on the policy.

Given the correct information Premier would not have offered cover. This means it can avoid the policy from the start of the term and not deal with any claims, and return any premiums paid. And this is what Premier did.

I do understand this will be disappointing for Mr W, however I intend not to uphold his

complaint because Premier have provided sufficient evidence that shows it would never have offered a policy, so I can't tell it to provide cover. I'm satisfied it was entitled to avoid his policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, Premier does not have to deal with his claim following the damage to his car.

As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Premier to rely on it to avoid Mr W's policy produces the fair and reasonable outcome in this complaint.

Responses to my provisional decision

Mr W replied to say he felt strongly that Premier was just trying to avoid paying on a technicality. He asked if the named driver on his policy was a friend who had not disclosed penalty points to him, would the same decision be made.

Mr W said he was still adamant if he had known about the points, and they had been disclosed to Premier that a policy would have been offered albeit at a higher rate.

Premier responded and said it accepted the 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.

In response to Mr W's comments

My decision is based on the specific evidence in this case. It is the policy holder's responsibility to ensure all information provided is correct and complete. The policy was only available if the policy holder and *any* named driver are totally conviction free.

I am satisfied Premier have provided sufficient evidence to demonstrate it wouldn't have provided cover for anyone with penalty points on their driving licence or for Mr W individually.

I realise this matter has caused Mr W a great deal of stress and a significant financial loss and I am truly sorry for this. However based on the evidence I have reviewed, I maintain my provisional decision.

Therefore, I do not uphold Mr W's complaint for the reasons I have given, and I do not require Premier Insurance Company Limited to do anything further in this case.

My final decision

For the reasons I have given I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 August 2024.

Sally-Ann Harding
Ombudsman