

The complaint

Mrs S has complained that AA Underwriting Insurance Company Limited (AAUW) cancelled her motor insurance policy.

What happened

Mrs S took out a policy with AAUW in November 2023. It is not in dispute that when she did so she was asked if she'd had any previous claims and stated she hadn't. But she had forgotten about a windscreen claim she'd made in 2022, which she should have declared.

AAUW found out about the claim when it checked the central database of claims – The Claims and Underwriting Exchange (CUE). AAUW emailed and wrote to Mrs S telling her it had discovered the claim and that this had led to it charging an additional premium, which she needed to pay. AAUW sent an email and two letters to Mrs S, including one letter telling her that her policy would be cancelled if she didn't pay the additional premium, but Mrs S didn't see these. In the end AAUW emailed and wrote to Mrs S telling her the policy had been cancelled. Mrs S has said the first she knew of this was when she saw a refund of premium had gone into her bank account and called AAUW to check why this was and was told her policy had been cancelled. Mrs S found out when she tried to take out a new policy that declaring she'd had a policy cancelled made the premium much higher. To avoid having to pay this her husband took out a policy to cover their car with Mrs S as a named driver.

Mrs S complained to AAUW, but it said it was entitled to cancel the policy and it wouldn't remove the record of the cancellation.

Mrs S asked us to consider her complaint. One of our investigators did this. She said AAUW should have relied on the legislation in place to deal with a failure by a consumer to provide the correct information when taking out a policy, as opposed to simply recalculating the premium under Mrs S's policy and asking her to pay an additional premium. She explained the correct legislation is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) and that this did not actually give AAUW the right to charge an additional premium. She acknowledged it did give it the right to cancel Mrs S's policy by giving her notice it was going to do so, but that it had instead relied on the policy terms to do this. She said that in light of this it had not acted fairly and that it should pay Mrs S £175 in compensation for the distress and inconvenience its actions had caused her and remove any record of the cancellation of her policy.

AAUW does not agree with the investigator's view and is clearly very concerned about her approach, which it thinks is at odds with our normal approach in complaints like Mrs S's one. AAUW has said it does not believe that CIDRA applies in respect of Mrs S's failure to declare the claim she'd made in 2022 because she did not actually make a claim against her policy with AAUW. It's questioned the investigator's request for it to provide evidence that the undeclared claim would have resulted in a higher premium under Mrs S's policy, as it is a general principle that any claim 'can' have an impact on a customer's premium. And it maintains it was entitled to request the additional premium. It feels the investigator has lost sight of the fact that Mrs S's previous insurer incorrectly added her windscreen claim to CUE. And that any compensation should be paid by this business to Mrs S and not by

AAUW. It's also said if Mrs S had acted in good time and responded to its communications her policy would not have ended up being cancelled.

In essence, AAUW is saying Mrs S had the opportunity when she purchased the policy to declare the claim and again when she received the policy documentation to check, but failed to do so. And she also had the opportunity to contact AAUW when she was asked to pay the additional premium. And I presume that because of this it remains of the view that it followed the right process and was therefore entitled to cancel Mrs S's policy.

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.

First of all I should make it clear that we consider each case on its merits, but we do aim to be consistent. And I'm satisfied that the investigator's approach in considering CIDRA is appropriate and in line with what I'd expect. AAUW is mistaken in suggesting that CIDRA doesn't apply because Mrs S didn't make a claim under her policy with it, as CIDRA has a section that specifically deals with what should happen if there is a qualifying misrepresentation, but the consumer has not made a claim.

While I appreciate there were also policy terms AAUW could rely on to cancel Mrs S's policy, I consider it to be good industry practice for an insurer to rely on CIDRA when there has been a misrepresentation by a consumer, as this is exactly the situation CIDRA is there to address. So, I do not consider it was appropriate for AAUW to rely on the terms of Mrs S's policy to cancel it and I think in doing so it treated her unfairly. But before I explain why I'm upholding Mrs S's complaint I think it would be helpful if I explain in more detail what I think AAUW should have done when it discovered Mrs S hadn't declared a claim.

Before taking any action at all AAUW should have contacted Mrs S and asked her to explain why she hadn't declared her claim. This is so it could establish whether she had failed to take reasonable care not to make a misrepresentation. Then once it had established Mrs S had made a qualifying misrepresentation by checking the claim would have resulted in a higher premium, it should have considered whether this was reckless or deliberate or careless. I think in Mrs S's case, as she has said she forgot about the claim, AAUW would have decided it was careless if it had considered it. This means the remedies AAUW had available under CIDRA did not include it charging Mrs S an additional premium. It had two options. The first was to continue with the policy and let Mrs S know that it would settle any claims she made under it proportionately. The second was for it to notify Mrs S that it had discovered she had failed to take reasonable care not to make a misrepresentation and that it had decided to cancel her policy because of this. And, as a matter of good industry practice, it should have given her the option to cancel it first.

This doesn't mean AAUW couldn't have offered Mrs S the option to pay the additional premium instead of using the remedies available to it under CIDRA, it just means in doing so it needed to explain its options under CIDRA and that it had decided not to use these, as it felt requesting an additional premium was better for Mrs S. Then if Mrs S had said she would prefer it to use one of the remedies under CIDRA, it should then have done this.

However, the reason I have decided to uphold Mrs S's complaint is due to AAUW's unwillingness to provide the evidence our investigator asked for to show that the windscreen claim Mrs S failed to declare would have affected her premium, i.e. led to it offering her a policy on different terms. AAUW has said windscreen claims are a rating factor and will affect the premium quoted. And its provided a screenshot which states that previous windscreen claims should be declared. And that – if one has not been declared – a requote

should be done and an additional premium charged. But it has not shown specifically the windscreen claim Mrs S failed to declare would have resulted in an additional premium; only that the fact that a standard non-fault claim would have done. I say this because at the point AAUW reredited the policy and it resulted in an additional premium, it did so on the basis the claim was a standard non-fault claim, as opposed to a windscreen claim. And it has not provided any compelling underwriting evidence which shows a windscreen claim will always result in an additional premium. I think this means that AAUW has not actually demonstrated Mrs S's misrepresentation was a qualifying one under CIDRA.

This means I don't consider AAIS has shown it was entitled to take any action as a result of Mrs S's failure to declare her previous windscreen claim. This is because it has not shown she made a qualifying misrepresentation under CIDRA. And, while the policy terms did give AAUW the right to give Mrs S notice and cancel her policy, as I have already explained, this was not the appropriate course of action for a misrepresentation made when the policy was taken out.

Because I'm not satisfied AAUW was entitled to take any action at all in response to Mrs S's failure to declare her claim, it follows that I think it treated her unfairly when it cancelled her policy. This caused Mrs S distress and inconvenience. And I think the £175 in compensation suggested by the investigator is appropriate for this. It also means Mrs S shouldn't have a cancellation recorded against her, so AAUW needs to remove any record of this. And I think for completeness it should provide Mrs S with an email or letter confirming her policy was cancelled incorrectly. AAUW should also provide Mrs S with proof of her no claim discount at the point her policy was cancelled if it has not done so already.

Putting things right

For the reasons set out above I've decided to uphold Mrs S's complaint and make AAUW do the following:

- Pay Mrs S £175 in compensation for distress and inconvenience. AAUW must pay the compensation within 28 days of the date on which we tell it Mrs S accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.
- Remove any record of Mrs S having a policy cancelled from its records and any central databases it placed it on.
- Provide Mrs S with a letter stating her policy was cancelled incorrectly.
- Provide Mrs S with proof of her no claim discount entitlement at the point her policy was cancelled.

My final decision

I uphold Mrs S's complaint about AA Underwriting Insurance Company Limited and order it to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 23 October 2024.

Robert Short
Ombudsman