

DRN-5028063



The complaint

Mrs B has complained about Premier Insurance Company Limited. She isn't happy that it avoided her policy and declined her claim under her motor insurance policy.

What happened

I looked at this case and provided my initial thoughts in my provisional decision as follows;

Mrs B made a claim under her motor insurance policy and Prestige looked to deal with the claim. And as it couldn't find a repairer in its network it asked Mrs B to look to get her car repaired. But while this was ongoing and before the claim was finalised Prestige noticed that Mrs B's partner, a named driver on the policy who didn't drive anymore due to ill health, no longer had a British driving licence. So, it avoided the policy and declined the claim as it wouldn't have provided cover had it have known this.

When Mrs B complained to Prestige about this she explained that they had been living abroad for a while and Mr B had a foreign licence and his British licence had expired. And when they returned to the United Kingdom Mr B didn't renew his British licence as his health was poor and he didn't drive. Mrs B acknowledged that she should probably have taken him off cover and that he didn't have a British Licence. But Prestige maintained its position and said it wouldn't have offered insurance as Mr B didn't have a British licence. So, Mrs B complained to this Service.

Our Investigator looked into things for Mrs B and upheld her complaint. He thought the fair and reasonable thing to do, in the particular circumstances of this case, was for Prestige to have removed Mr B from cover. He wasn't driving at the time of the theft and hadn't driven the car while Prestige insured it and so he thought that Prestige should deal with the claim and charge Mrs B, solely, for time on cover.

In response Prestige said it still wouldn't have insured Mrs B on her own. This was because Mrs B got a significant reduction in cover with Mr B on the policy and without it her premium tripled. And it was then above the amount it would ordinarily quote for. But our Investigator highlighted that Mrs B was quoted at a higher rate than Prestige said it would quote for so maintained his position.

As Prestige didn't agree the matter has been passed to me for review.

What I've provisionally 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, and despite my natural sympathy for the position Mrs B has found herself, I'm only partly upholding this complaint subject to any further representations I receive. I'll explain why.

This case has been complicated by the fact that all the information provided wasn't complete. And I've reached out to the insurer, the broker, and Mrs B while the matter has been with me for consideration in order to gain further information in order to finalise this complaint.

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 Mrs B failed to take reasonable care not to make a misrepresentation when the policy was first taken out - she said that Mr B had a UK driving licence when he didn't as he had a licence issued in the European Union. It isn't in dispute that Mr B didn't have a British licence. I've seen the questions that were asked about this and I agree that they are clear, and the accompanying information clarifies what is required. And it seems to be accepted by all involved that Mrs B should have told Prestige about this when the policy was taken out and had Prestige have been clearly informed it wouldn't have insured Mr B.

I've looked at the question Prestige asked about whether Mr B held a UK licence and I think the question was clear. And I think that Mrs B, or her representative, should have known this and from Mrs B's explanation since, she clearly did know this, so I think she didn't take reasonable care in answering this question.

Prestige has explained that had it been aware of this it wouldn't have insured Mr B and it has provided underwriting criteria evidencing this. And so, I'm satisfied that the misrepresentation was a qualifying one as it clearly would have made a difference and Prestige wouldn't have provided cover for Mr B.

This means I'm satisfied that the misrepresentation was a qualifying one.

Premier Insurance has said Mrs B's misrepresentation was careless and said it would refund her premium and I agree. It was clearly a busy and difficult time for Mrs B when she applied for insurance and Mr B wasn't able to drive but she wanted to keep him on cover as they had always had insurance cover together. So, I think Premier has acted fairly here in looking to refund the premium as it avoided the policy, treated it as if it never existed. But I'm not sure it has refunded both premiums back to the commencement of the policy and it would need to do this. I'll leave Prestige to clarify this in response to my provisional decision.

Ultimately, as I'm satisfied Mrs B's misrepresentation should be treated as careless I've looked at the actions Premier Insurance can take in accordance with CIDRA.

When our Investigator looked into things for Mrs B he thought Premier should have just removed Mr B from cover and dealt with the claim as if Mrs B was the sole insured. And Premier said that it had considered doing this, but the removal of Mr B meant the cost of the premium increased significantly to the extent that it was outside of its pricing structure. This was because Mr and Mrs B got a significant discount as a couple and Premier has now provided clear confirmation of this (although the information originally provided to the Investigator wasn't clear).

As this further information from Premier clearly shows that it wouldn't have offered Mrs B cover on her own, as the cost of such a policy was too high and sat outside its pricing criteria, I can't say it has acted unfairly. It transpires that the insurance broker had offered Mrs B cover after her policy was cancelled, but through a different insurer, and obviously I can't hold Premier responsible for that as it has now shown it wouldn't have offered cover.

Given all of this, and the fact that there was a careless misrepresentation and Premier has shown that it wouldn't have provided cover for Mrs B on her own I can't ask it to deal with the claim. I say this as it is clear that it wouldn't have insured Mrs B had the question been answered correctly and it is clear that Mrs B accepts she made a careless misrepresentation. So, I agree the actions taken by Premier aren't unreasonable. Ultimately the actions it has taken are in line with the remedies detailed in CIDRA based on the

careless misrepresentation identified. It was entitled to avoid the policy and decline the claim.

It would appear that Premier has only refunded one policy premium as it felt the misrepresentation was careless. But there were two policy periods and in line with CIDRA, it would have to avoid the two policies Mrs B held and so it is only fair that it should also refund the first policy if it hasn't already done this.

Finally, Premier's claim handling here was poor, delayed and drawn out. It took over three months to conclude its position and avoid the policy and decline the claim. But it had already looked to repair Mrs B's car and when it struggled to find a repairer it told Mrs B to get the repairs done herself only to change its mind and decline the claim. Given Mrs B's position and her husband's poor health I think all this has caused her a fair degree of stress and inconvenience. The protracted nature of Premier's claim handling and decision making caused Mrs B a lot of stress and worry. And so, I think Premier should pay her compensation for this and so I'm provisionally minded to award £200 compensation, in addition to refunding the premiums.

Replies and developments

In relation to my provisional decision Mrs B said that Premier organised the collection of her car before the completion of the claim. She highlighted it was confirmed that her husband hadn't changed back to a British licence due to ill health and yet Premier collected her car despite claiming her '*insurance was void*.' Mrs B said it shouldn't have taken her car, and this led her to believe it was '*going to honour the insurance*' claim leading her to tell the DVLA that the car had been scrapped. And ultimately, Mrs B believed she could have arranged for her car to be fixed or sold if Premier had informed her in time.

While Premier restated its position generally and said it didn't think it was fair to repay the original policy premium as it had chosen not to do this originally. It highlighted the policy is separate and distinct and that there wasn't anything in CIDRA that meant its decision to void the second contract affected the first contract. And went on to outline hypothetical scenarios and said it could still be exposed to a claim and was on cover. So, to compel Premier to '*void the policy and refund the premium deprives us of consideration (the premium) for that cover without any corresponding reduction in that cover*.' Ultimately it felt it would be unfair to refund the premium for the first policy without demonstrating why it would be unfair to Mrs B.

Additionally, after I issued my provisional decision and before a final decision was reached Premier asked its repairer or salvage agent to return Mrs B's car to her. And it told her that she needed to accept the car back or it would start charging storage costs.

Mrs B made our Investigator aware she was uncomfortable with this and was clearly stressed by the salvage agents approach to her. As far as she was aware her complaint was ongoing and she didn't want the car back as it had been such a prolonged period and it would be very difficult for her to repair it or take the car back now. Mrs B explained that she had told the DVLA that she was no longer the keeper of the car as Premier had taken it and she no longer drove. And explained that she was now living in accommodation which meant it was unsuitable to have the salvage returned.

Our Investigator wrote out to Premier and asked it to stop contacting her about the salvage until this matter was finalised. But its salvage agent continued to chase Mrs B. So I spoke to Premier direct and updated Mrs B accordingly. I said;

Further to my provisional decision and my discussion with Premier Insurance last week, I understand that there have been further developments in this case specifically in relation to Mrs B's car (the salvage).

As I understand things Premier Insurance felt Mrs B's car was a write off initially before deciding that the car was repairable. Premier then looked to repair her car before deciding that it wasn't able to within its network of repairers. So, it returned the car to Mrs B and asked her to get an estimate for the repair of her car. But when Mrs B got a garage to look at the car it was quickly established that the car was indeed a write off and so Premier arranged to collect her car again.

It was around this time, over two months after the incident, that Premier decided that it may decline the claim and avoid the policy. But it had already collected the car at this stage, and I can see that its recovery agent contacted Mrs B around three months after the initial claim to see if she wanted the car back. But Mrs B said that she didn't want the car back and she was still clearly hopeful that her claim would be met in full, and she had complained about what had happened and the decline of her claim at that stage.

Mrs B has now been contacted by Premier's salvage agent to say that she will be charged for storage charges and attempts made to redeliver her car which I find surprising. I asked our Investigator to reach out to Premier to halt this process, but Mrs B has been chased again about this which she has found very stressful. Indeed, I asked Premier again during our call last week to ensure that it contacted its agent again and ensured that the chasing of Mrs B stopped while this matter was concluded. But Mrs B has been contacted again and she is clearly finding this continued contact, while the matter is still ongoing, overbearing.

I must emphasise that Mrs B has said that she doesn't want the car back and isn't comfortable driving - given her health and age I can understand this. And she has found the latest steps upsetting and overbearing which is understandable. I don't wish to leave these issues hanging over Mrs B and so will advance them here before concluding my final decision.

So, in addition to the redress outlined in my provisional decision I'm minded to ask Premier to pay Mrs B the salvage cost of her car. I say this as Mrs B clearly doesn't want her car back now and has told the DVLA that she isn't the owner of the car, and it was declared a write off by Premier Insurance in any event. It would clearly be too difficult for Mrs B to take possession of the car now and given the passage of time the car would be very difficult to repair.

I've had a brief discussion with Premier about this last week and they seemed to be in agreement with this position and suggested paying Mrs B the present day salvage value (of her unrepaid car). I've thought a lot about this, but I think the salvage calculation should be made from around the date of claim. I know Premier feels that this isn't fair as it thinks if it wasn't for the misrepresentation it wouldn't have been on cover. But it is clear that Mrs B made a mistake and I think Premier should have assessed the claim (verifying documentation and the claim) relatively quickly, not at the end of its drawn-out repair process. So, I think the fair and reasonable thing to do, in the particular circumstances of this case, is to pay Mrs B the cost of salvage from around the date of claim.

Finally, I also think that Premier should pay Mrs B an additional £250 compensation for the clear, stress, worry and inconvenience its agent has caused Mrs B in threatening to charge her now for storage costs and to return her car when she isn't in a position to take it back especially when this matter clearly wasn't finalised.

I asked for any comments from both sides before finalising my decision. And underlined the need for Premier Insurance to ensure it prevents its salvage agent from contacting Mrs B about her car until a final decision is made.

In response Mrs B has continued to explain how worried she is by all of this while Premier Insurance responded in detail. It said the margins in repairs can be slim and that it doesn't take much to force an alternative route in explaining why it took so long to decide whether Mrs B's car was repairable or not. Highlighting that estimating repair costs isn't an exact science. It also said the overall valuation placed on Mrs B's car for insurance purposes was less than its value which impacted things here. And highlighted the spiralling industry repair costs which it felt was also a contributing factor alongside a detailed explanation as to why it felt the months of delay was unavoidable.

In relation to verifying the claim Premier said any large-scale operation works through systems and procedures and its default is to work on the assumption that everything is correct. And this is why it only looked to verify the claim and documentation at the end of its process. Premier Insurance accepted that this took longer than usual in this instance. But highlighted again that it feels Mrs B should have provided the correct details in the first instance and said the matter had been prolonged while under consideration by this Service.

Premier said it accepted it was sensible for it now to dispose of the salvage but thought it shouldn't be held responsible for any of the delay here and it shouldn't be responsible for any of the depreciation. Saying again that if it wasn't for the misrepresentation it wouldn't have been involved in the claim or had the salvage in its possession.

Finally, Premier said it wouldn't have *'title to the insured's vehicle...'* so it wasn't able to dispose of Mrs B's car suggesting that *'...we could be exposed to a claim through the tort of conversion and/or a theft charge.'* Premier went on to suggest that as it doesn't own the vehicle and *'...whilst you may be able to require us to pay the insured an amount of compensation equivalent to the salvage value of the vehicle at the time of the incident, our salvage agent will still have in their possession a vehicle that doesn't belong to them...'*

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 partly upholding this complaint. I don't propose to revisit the main arguments here, as the position is well known to both sides, but I will go over some of the key points and additional issues that have come to light in advancing this complaint.

I have a great deal of sympathy for the position Mrs B has found herself as she has mistakenly put her husband on cover, even though he was never going to drive her car given his poor health, as this is what she had traditionally done. But I agree that Premier Insurance hasn't acted unreasonably in turning down the claim in line with CIDRA. Although I am partly upholding this complaint as Premier Insurance haven't dealt with her claim (including the repairs and verification process) very well which has caused Mrs B a significant amount of additional stress, inconvenience, and financial worry. I'll explain why.

I'd like to reassure both sides that whilst I'm aware I may have condensed some of the complaint points in far less detail and in my own words, I've read and considered everything both sides have told us. I'm satisfied I've captured the essence of the complaint and I don't need to comment on every point individually, or possibly in the level of detail both sides would like, in order to reach what I think is a fair outcome. This isn't meant as a discourtesy,

but it simply reflects the informal nature of our Service. And I have of course taken account of the relevant law and guidance when reaching my decision.

I don't propose to go over the misrepresentation position in any further detail. It is clear Mr B was added to the policy when it was taken out and that he only had a foreign licence at that time. Had Premier Insurance been aware of this it wouldn't have provided cover. So, in line with CIDRA, it has acted fairly in declining the claim and it should refund the policy premiums Mrs B paid as it accepts that this was a careless misrepresentation.

I note Premier Insurance has said that it shouldn't have to refund Mrs B's first policy premium. It has said it would be on cover for any claim from the time of the first policy and has suggested that there could still be a claim now so feels it would be unfair to refund the premium. While I accept it is possible, although not likely given the significant passage of time, that a claim could be made against the policy now. I think it is clear that Premier wouldn't meet a claim from the first policy period and would look to avoid the policy, just as it has in this instance, if one was presented (during the policy term or now) so I'm not persuaded by this. Ultimately Premier has clearly said it wouldn't have offered cover at all, and eventually evidenced its position, so I don't think it would be fair and wouldn't be acting in line with CIDRA or in a fair and reasonable way to not refund the first policy premium alongside the second as that is when the misrepresentation first occurred.

I understand Premier Insurance's general position around delays in looking at the repair of Mrs B's vehicle and the changing position about whether her car was a write off or not. But I haven't seen anything to clearly explain why the car was deemed a write off, then repairable by its own network, then not repairable by its own network, returned to Mrs B to undertake repairs of her own accord, before eventually accepting her car was a write off and collecting her car. While I accept that there can be delays this doesn't feel fair or reasonable on Mrs B and I wouldn't expect a straightforward claim like this to take months and the customer journey here was poor.

Premier has also said it only looks to verify claims towards the end of its processes and obviously I accept its point that to delay claims at the beginning would be unnecessary and inconvenient at the outset. But I would expect it to look to verify the claim within a reasonable time frame.

In this instance it was looking to write the car off at a relatively early stage, although it changed its mind, and I can't understand why it didn't verify documentation at that stage. And I don't think it treated Mrs B fairly by leaving the claim verification part of the claim outstanding for months. Had it verified the claim within a reasonable time frame it is likely Mrs B would have been able to repair her car herself and would not have had to endure additional losses, stress, inconvenience and pressure in relation to the return of the salvage and threats of storage costs.

Indeed, even around the time of collecting Mrs B's car for a second time it was clear that Mr B had a foreign driving licence and so her car should not have been collected which would have allowed her to repair the car herself. In line with ICOBS insurance firms must handle claims promptly and fairly. And it is difficult to argue that Premier has done this here given the delays in verifying the claim and in looking to repair Mrs B's car.

I do accept that the complaint has been drawn out, but this case wasn't straightforward and was complicated by incomplete information provided and questions not been answered, or evidence not being provided. For example, the underwriting information and costing which was initially provided wasn't correct or clearly explained. And it was only when this was explained and evidenced, alongside some additional information from the broker, that the misrepresentation position could be finalised. An insurer needs to evidence what it would

have done, and we can't just accept what it says as Premier is aware. And the delay in information being provided and the need to gain further explanation has clearly impacted things here. But I think most of the problems caused here would have been avoided had Premier acted in a timely manner when it first looked at the claim and looked to make its decision to decline. Although Mrs B's claim would not have been met she would have had her car in her possession and been able to repair it while still looking to complain separately about the decline of her claim.

It is disappointing that Mrs B was approached by Premier's salvage agent before this decision was finalised. This clearly caused a lot of worry, stress and inconvenience for Mrs B. As this matter was ongoing and still under consideration by this Service this was surprising and caused Mrs B additional financial concerns. And Mrs B found the contact and threats to charge her additional money or to return a car that she wasn't in a position to take back very stressful. Indeed, there was further contact by the salvage agent on numerous occasions after this Service asked for contact to stop until this was all finalised and a final decision made. And Premier was made aware how difficult and stressful Mrs B was finding this contact.

Premier Insurance also said it wouldn't have '*title to the insured's vehicle...*' so it wasn't able to dispose of Mrs B's car. Obviously ownership of the vehicle would be passed to Premier or its agent here and this can be agreed with Mrs B who has also explained that she doesn't want the car back and told the DVLA that she doesn't own the car which was taken by Premier's agent. So, Premier can finalise the transfer of ownership here while paying Mrs B the full salvage figure from around a month after the date of claim.

I know Premier feels that this wouldn't be fair, and it shouldn't have to pay any depreciation. But I do think it should have verified the claim within a reasonable time frame and within a month of the date of claim feels fair. And, as I've already noted above, had it have done so and returned the car to Mrs B she may well have been able to pay to repair the car herself reducing her losses.

Putting things right

Given all of this I think the fair and reasonable thing to do, in the particular circumstances of this case, is to partly uphold this complaint. Premier is entitled to decline the claim in line with CIDRA and refund the policy premiums to Mrs B. It should pay Mrs B the salvage cost of her car from around a month after the date of claim.

Premier Insurance should also pay Mrs B a total of £450 compensation in acknowledgement of the poor claim handling, delayed repairs process, and the protracted nature of Premier's claim handling and decision making. And the additional stress, worry, inconvenience its agent caused Mrs B in chasing her about the salvage and threatening to charge storage costs while this complaint wasn't finalised. I have to consider the position a consumer is in when looking at compensation and it is clear that Mrs B and Mr B's health hasn't been great and the impact of all this has caused considerable stress, upset and worry over a prolonged period.

My final decision

It follows, for the reasons given above, that I partly uphold this complaint. I require Premier Insurance Company Limited to;

- Pay Mrs B the salvage cost of her car from one month after the date of her claim,
- Refund Mrs B's full premiums for both policies she took out as Premier wouldn't have provided cover; and

- Pay Mrs B £450 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 5 December 2024.

Colin Keegan
Ombudsman