

The complaint

Mr G complains that Liverpool Victoria Insurance Company Limited (“LV”) declined a claim on his motor insurance policy and said the policy was void.

What happened

Mr G made a claim on his policy for the value of a car that had been damaged beyond repair. LV rejected the claim. It said when he’d taken out the policy, Mr G had said he was the registered keeper and owner of the car, but in fact his son was the registered keeper and owner and, if it had known that, it would not have sold the policy.

LV said this was a reckless misrepresentation by Mr G. It said the policy was void, which meant it was treating the policy as if it had never been in force, and didn’t return the premiums to him.

Mr G complained but LV didn’t change its decision, so he referred the complaint to this Service. He said that due to a language barrier, he made a simple mistake; the car was registered in his son’s name but he gave his details in error.

Our investigator said:

- There had been a misrepresentation as Mr G’s son was the owner and registered keeper, and she didn’t think Mr G had taken reasonable care when answering the question.
- LV had shown it would not have sold the policy if it had been given the correct information, so it could void the policy.
- But, taking into account that English is not Mr G’s first language, she didn’t think he had done this deliberately; this was a careless misrepresentation, so LV should refund the premium.

Mr G said he would accept a return of the premium, but LV didn’t accept the investigator’s view. It said:

- Mr G knew he wasn’t the registered keeper and owner, and the explanation he had given showed he didn’t think it mattered as he and his son both used the vehicle.
- It wouldn’t class this as deliberate, but Mr G had been reckless.

The investigator didn’t change her view. LV maintains this was a reckless misrepresentation, which means it doesn’t have to refund the premium. So I need to make a 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.

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 an insurance policy. The standard of care is that of a reasonable consumer.

If a consumer fails to take reasonable care and makes a misrepresentation, the insurer has certain remedies if there is a qualifying misrepresentation, as defined in CIDRA. For it to be a qualifying misrepresentation the insurer has to show it would either have offered the policy on different terms or not offered it at all, if the consumer hadn't made the misrepresentation.

It's not in dispute that the information Mr G gave was incorrect – he said he was the registered keeper and owner of the car, when his son was the keeper and owner. I don't think Mr G took reasonable care when answering the question.

LV has also shown its underwriting criteria mean, if it had known that, it would not have sold the policy. So this was a qualifying misrepresentation and, since LV would not have sold the policy, it's fair to say the policy is void.

The issue in this case is whether the premium should be refunded. Mr G has now said he'd accept that but LV doesn't think the premium should be repaid.

The remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless. LV has treated it as a reckless. If the misrepresentation was reckless, it would not have to return the premium to Mr G.

It's for LV to show the misrepresentation was reckless. To do this, it needs to show Mr G did not care whether the information he gave was untrue or misleading, and did not care whether or not it was relevant to the insurer.

LV says its online process includes an explanation of what's meant by the term registered keeper and owner, and if Mr G was unsure about any of the questions, he could have used the live chat function or called its contact centre. And while it tries to assist customers if it's made aware of any vulnerabilities such as language barriers, Mr G didn't mention this until after the claim had happened

I've taken these points into account. However, English isn't Mr G's first language and with that in mind, I can see how the error could have happened. He's explained that he didn't understand the importance of the question about ownership. Mr G could have taken more care to check his understanding – and to ask if he wasn't sure. But given the language barrier, I don't think it would be fair to treat this as a reckless, rather than careless, in these circumstances. So, while it's fair to treat the policy as void, it should be recorded as a careless misrepresentation and the premium should be returned to Mr G.

My final decision

I uphold the complaint and direct Liverpool Victoria Insurance Company Limited to record this as a careless misrepresentation and to refund the premium to Mr G.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 30 December 2024.

Peter Whiteley
Ombudsman