DRN-5095589

The complaint

Mr C complains that One Insurance Limited (OIL) avoided his van insurance policy and refused to pay his claim.

What happened

Mr C purchased a van for private personal use, and he took out an insurance policy with OIL in 2021. The policy was renewed with OIL in 2022 and 2023.

In December 2023 Mr C's van was stolen, so he made a claim to OIL. The van was recovered but was damaged, so Mr C continued with the claim with OIL.

However, OIL said Mr C had answered the question they asked about whether the van had any modifications incorrectly when taking out and renewing the policy. And OIL considered this to be a careless qualifying misrepresentation, which they said entitled them to avoid the policy (treat it as if it never existed), return the premiums paid and to refuse the claim.

As Mr C was unhappy with OIL's decision, he approached the Financial Ombudsman Service.

One of our investigators looked into things but he didn't uphold the complaint. He said he thought OIL had taken reasonable actions in avoiding the policy, declining the claim and returning the premiums. He said this was in line with the relevant applicable insurance law.

Mr C didn't agree and asked for a final decision from an ombudsman.

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, whilst I appreciate it will come as a disappointment to Mr C, I've reached the same outcome as our investigator.

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.

OIL thinks Mr C failed to take reasonable care not to make a misrepresentation when he took out and renewed the policy. OIL says Mr C should have disclosed that his van had been modified as he'd built a platform bed in the back, as he used his van for camping trips. Mr C told OIL he'd done this shortly after buying the van, which was around two to three years prior to taking out the policy in 2021, which then renewed in 2022 and 2023.

I've looked at the question Mr C was asked when taking out the policy via the comparison website. This asked:

> *"Does the van have any modifications?*
> *What are modifications?*
>
> *A van is considered modified if it's been changed in any way from its original specification.*
>
> *This includes: Changes to the bodywork, suspension or brakes, cosmetic changes and changes to the engine management system or exhaust system.*
>
> *For the insurance to be valid you must include all modifications."*

Mr C answered 'no' to this. And at renewal in 2022 and 2023, Mr C's policy schedule also showed the following question:

> *"Has the vehicle been modified or altered from the manufacturer's specification?"*

And the answer to that question each year was recorded as *"No"*.

The documents outlined the importance of all the information being correct, including if there had been modifications:

> *"Examples of material information that should be disclosed to us includes but not limited to:*
>
> *• A change to any of the facts shown on your insurance statement of facts form.*
> *• Modifications to any component of your vehicle (especially wheels, engine, structural and none structural bodywork such as sign writing)."*

I think the question outlined above was clear in outlining both changes from the way the vehicle was from the manufacturer and original specification, and cosmetic changes, would be classed as a modification which needed to be disclosed.

Mr C says he didn't consider the platform bed a modification as it didn't increase or change the performance of his van. He also said that these changes had only been made inside the van, and he didn't change anything externally, so he didn't consider this a modification. He also said a wider online web browser search wouldn't indicate this would be a modification. But this was an assumption by Mr C about what OIL does and doesn't consider a modification, and aside from the question being clear that this also included cosmetic changes, modifications to any component or any alterations from the manufacturer's specification, which this was, he could've contacted OIL if he was unsure.

So, I don't think Mr C took reasonable care not to make a misrepresentation when he said his vehicle hadn't been modified and he didn't amend this at the following renewals either.

OIL has provided its underwriting criteria to this service to show what they would have done if Mr C had declared that his vehicle had been modified. I can't share this in full as it is commercially sensitive. However, I'm satisfied OIL has demonstrated it wouldn't have offered cover if Mr C had disclosed the modification to his van.

This means I'm satisfied Mr C's misrepresentation was a qualifying one.

OIL has said Mr C's misrepresentation was careless, rather than deliberate or reckless. Mr C could have contacted OIL if he was unsure whether the change he made was considered a modification, but he didn't do so. Treating it as careless is more favourable to Mr C than treating it as deliberate or reckless and so I think OIL has acted reasonably in classing Mr C's misrepresentation as careless.

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

This outlines that in the event of a careless misrepresentation, where the insurer would not have entered into the consumer contract on any terms, as is the case here, the insurer can avoid the policy and refuse all claims but will need to return the premiums.

Therefore, I'm satisfied OIL was entitled to avoid Mr C's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, OIL does not have to deal with his claim. As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing OIL to rely on it to avoid Mr C's policy produces the fair and reasonable outcome in this complaint. Therefore, I don't think OIL has acted unfairly.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 November 2024.

Callum Milne
Ombudsman