

## **The complaint**

Mr M has complained that Premier Insurance Company Limited avoided (treated it as if it never existed) his motor insurance policy and refused to pay his claim.

## **What happened**

Mr M took out a motor insurance policy with Premier through an online price comparison site. When his van was damaged in an accident, he tried to claim on his policy.

Premier declined his claim and avoided his policy, but it said it would return the premiums he'd already paid. When Mr M complained, it said he'd answered the question he'd been asked about the named driver's motoring convictions incorrectly. And that it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid his policy and refuse his claim.

Mr M brought his complaint to us, and our Investigator thought it should be upheld in part. She agreed there had been a qualifying misrepresentation. But she didn't think this was deliberate or reckless. She believed it was careless. Premier wouldn't have offered cover at all if the conviction had been disclosed or with the named driver removed from the policy. She said Premier should refund Mr M's premiums.

Premier disagreed that the misrepresentation was careless, but it refunded Mr M's premiums in any case. Mr M replied that he'd answered the question to the best of his ability. He said he hadn't deliberately misled Premier. And he said it had recovered and condemned his van before making its decision to avoid the policy. So he was without means to buy a replacement and couldn't look to get his van repaired.

## **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.

I can understand that Mr M feels frustrated by Premier's decision. He's explained that this was an honest oversight that will have significant consequences for him. And I was sorry to hear this.

Premier said Mr M had made a misrepresentation. So I'm satisfied that the relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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. One of these is how clear and specific the insurer's questions were. And

the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it is entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

Premier thinks Mr M failed to take reasonable care not to make a misrepresentation when he stated in his application via a comparison site that neither he nor the named driver on his policy had any previous motoring convictions. And I've looked at the question he was asked when he completed the application and agree he failed to take reasonable care. This is because he was asked to answer for the named driver:

*"Have they had any driving related convictions, endorsements, penalties, disqualifications or bans in the past 5 years?"*

An information box explained how to check this on the DVLA website. And I think this was a clear question asked by Premier through the comparison site Mr M used.

And then on the policy proposal form, Mr M was asked to check the following:

*"Please show below any unspent convictions, driving licence endorsements, fixed penalty offences or pending prosecutions which you or any other person who will drive have incurred in the last 5 years."*

But Mr M didn't add any convictions as he said he wasn't aware of any, and so he answered "None" for both himself, and the named driver. However after Mr M made his claim, Premier found that that named driver had a speeding conviction two years earlier. Mr M said he wasn't aware of this. But I think he should have asked or checked if he was unsure. And I think this means Mr M failed to take reasonable care not to make a misrepresentation when he said that the named driver didn't have any previous motoring convictions.

Premier has provided evidence from its underwriting guidelines which shows that if Mr M had not made this misrepresentation it would not have offered cover at all. And if the named driver had been removed from the policy, it wouldn't have offered Mr M cover by himself as the consequent premium exceeded its underwriting limits. This means I am satisfied Mr M's misrepresentation was a qualifying one under CIDRA.

I also think Mr M's misrepresentation wasn't a reckless or deliberate misrepresentation. This is because I think Premier hasn't shown that Mr M deliberately set out to mislead it. I think he didn't take sufficient care to check the named driver's details, as he should have done.

Therefore, I'm satisfied Premier was entitled to avoid Mr M's 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 van. But it should record the misrepresentation as careless and refund Mr M's premiums, as it's told us it will do.

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

Mr M said he was now unable to repair his van after Premier recovered and condemned it. But I can't see that he has first complained to Premier about this, so it has a chance to respond. If Mr M remains unhappy with its response, he can bring his complaint to us.

### **Putting things right**

I require Premier Insurance Company Limited to record Mr M's misrepresentation as careless and refund his policy premiums, as it's already said it will do.

### **My final decision**

For the reasons given above, my final decision is that I uphold this complaint in part. I require Premier Insurance Company Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 December 2024.

Phillip Berechree  
**Ombudsman**