

## **The complaint**

Mr C has complained about One Insurance Limited. He isn't happy about the way it settled a claim under his motor insurance policy - proportionately settling his claim.

## **What happened**

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

*Mr C was involved in an accident and made a claim under his motor insurance policy with One Insurance. But One Insurance reduced the settlement figure it paid Mr C when it paid him the value of his car. This was because Mr C had failed to tell One Insurance about a driving endorsement he had received and had it have known about the speeding offence it would have charged him 18% more in premiums. So, it reduced the settlement accordingly.*

*Mr C accepted that he had failed to tell One Insurance and that it could make a reduction in his settlement. But when he looked into things he said his new policy only cost 6% more so he thought it should only reduce his settlement in line with this. When he complained to One Insurance about this it maintained its position, so he complained to this Service.*

*Our Investigator looked into things for Mr C and upheld his complaint. She accepted that One Insurance could look to make the reductions it had in line with CIDRA if that is what it would have charged Mr C (a higher premium of 18%) had it have been told about his fixed penalty points. But as One Insurance hadn't provided any evidence to show it would have charged an additional premium, she thought One Insurance should refund the reduction it had made and pay £250 by way of compensation for the stress and inconvenience caused to Mr C.*

*As One Insurance 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.*

*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.*

*One Insurance thinks Mr C failed to take reasonable care not to make a misrepresentation when he took out his monthly policy for his car as he didn't disclose a motoring fixed penalty. So, it reduced the settlement by 18% in line with what it would have charged had it have known about the speeding endorsement.*

*I've looked at the questions asked and listened to Mr C's account. And it is clear that he was asked a clear question but that he forgot to tell One Insurance about the speeding offence – and this was impacted upon by the policy renewing monthly. So, I think Mr C didn't take reasonable care here which he seems to accept. And had One Insurance have known this it would have provided insurance, but it says it would have charged Mr C a higher premium (by 18%) which is why it has deducted this amount from the settlement figure it paid Mr C.*

*The difficulty here is that although One Insurance has said that it would have charged 18% more in premium and has provided some general information in support of its position, the evidence suggests that its actual actions wouldn't have increased the premium by this amount, or at all. Mr C has said that his next monthly policy only increased by 6%. However, One Insurance has clearly outlined to our Investigator that the only impact on Mr C's next premium was because of a change of vehicle, which increased Mr C's premium by the 6% outlined, and there was no impact on his premium by the speeding offence.*

*So, although One Insurance has provided some evidence supporting its position generally, that it would've charged a higher premium, the reality is that this isn't what happened at renewal a short while later – as it didn't charge a higher premium. And as it has clearly said that it hasn't charged Mr C a higher premium I can't say One Insurance would have acted differently had it have known that he had received a fixed penalty notice. It isn't enough for an insurer to say that it would have done something differently, it needs to show us. And from what I've seen, and what One Insurance has told us, it can't show that it would've charged more in premium, as it didn't, so I can't say it would be fair to make a proportionate deduction from Mr C's settlement.*

*Ultimately, as One Insurance hasn't been able to show it would have taken any other action had Mr C not misrepresented, then there is no remedy under CIDRA for One Insurance to take. So, I'll be upholding this complaint as, in effect, there's no qualifying misrepresentation.*

*In light of all this I agree the fair and reasonable outcome to this complaint is in line with our Investigator's view. I do accept that Mr C should've told One Insurance about his fixed penalty points. But as One Insurance hasn't shown that it would've charged Mr C a higher premium I can't say it has acted in line with CIDRA in making its deduction. So, it should refund the 18% deduction it made and pay 8% simple interest on the shortfall from the date of initial payment to the date of final settlement.*

*However, I don't think that Mr C should be paid £250 by way of compensation. Although I accept that all of this must have been inconvenient for Mr C I don't think he should be awarded compensation. I say this as he should have provided the correct information about his driving history in the first place. And so, it was understandable that One Insurance looked into all of this which was impacted upon by Mr C not telling them about his motoring offence.*

## **Replies**

Mr C responded to say he was happy to accept my provisional decision as laid out.

While One Insurance said it still wanted to challenge the position outlined and looked to reiterate that the premium would have risen by 18% had it have been made aware of Mr C's true driving history.

One Insurance reiterated that the only reason Mr C's premium increased in January 2024 was because of a change in vehicle and not because of Mr C's fixed penalty points. However, it looked to explain that as Mr C's policy was a rolling monthly contract it 'would not change the premium mid-term for an undisclosed conviction when it is already having an impact to a claim settlement.' And went on to say again that it had previously provided the insurers rating factors showing the impact the fixed penalty would have had.

It went on to say that any change in premium in relation to the fixed penalty would have impacted Mr C at the end of the annual term, which would have been May 2024, suggesting that when this was due there was an increase in premium that Mr C chose not to take out. But it didn't provide any detail of how the fixed penalty impacted Mr C's premium at that time acknowledging that *'a large portion of this increase would have been due to the claim, part of this increase would also be taking in to account the conviction as it became relevant for the new insurance period.'*

### **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 One Insurance's position here. It says it would have charged Mr C a higher premium and has now looked to explain more clearly how the policy works which is helpful. But I think this is partly what has contributed to the difficulty here and it's clear Mr C doesn't understand how the policy works which has caused confusion. I would have expected One Insurance to be clearer in explaining how its policy works here to its consumers - in this instance both when the policy was taken out and when Mr C complained about this.

Mr C has explained that the way the policy works (rolling month to month unlike a traditional yearly policy) contributed to him forgetting to tell One Insurance about his motoring offence, but he accepts that he should have done this. And so, he understands why it reduced his settlement after a claim under his policy.

However, he questioned the level of reduction to his settlement as he thought it was unfair. He was told when he placed another car on cover the following month that the increase, which was about 6% as opposed to the 18% figure One Insurance used, was because of the motoring offence. And it is clear from Mr C's questioning of One Insurance when he placed his new car on cover that he wanted to check the fixed penalty points were recorded and that he thought the increase in his premium of 6% was down to this. Given Mr C's conversations and electronic chat I can understand this, he clearly thought the increase because of the speeding conviction was only 6% and I think One Insurance's explanation contributed to this.

One Insurance has subsequently explained that this wasn't the case, and the 6% increase the following month was solely down to the change in vehicle and had nothing to do with the motoring offence. The policy was a rolling monthly contract that renewed yearly although his insurance period went month to month. One Insurance made the reduction to the settlement of 18% because of this and so any further increase in premium would apply after the policy had run for a year as opposed to the following month as Mr C expected. Given this confusion about how the policy works I can understand why Mr C raised his complaint and thought One Insurance had reduced his settlement unfairly.

As outlined in my provisional decision I accept that One Insurance can look to make a reduction in line with CIDRA if it can show that is what it would have done had it been made aware of the motoring offence. But I'm not persuaded it has in this instance. I say this as the information One Insurance has provided suggests how much it would have charged Mr C if the fixed penalty was disclosed. But this is just generally outlined in an email without anything to clearly show that this is how it would have acted at the time Mr C took out the policy which is what I would have expected to see in order to be persuaded here.

One Insurance has simply provided an email with an unidentified document which isn't dated or labelled suggesting that is why it made the 18% reduction. But that isn't enough to show that is how it would have acted at the time of renewal. To be satisfied that it acted fairly here in reducing Mr C's settlement I need to be provided with clear evidence to show that is what it would have done as opposed to a general undated and redacted screen shot. As I've

explained it isn't enough for an insurer to say it would have done something differently, it needs to evidence its position.

Even at the time it says it would have applied an increase in premium, around May 2024, it has simply said that there would have been an increase because of the fixed penalty. However, it hasn't been specific about this, and One Insurance acknowledged that most of any increase would be from the claim itself, as opposed to stemming from Mr C's fixed penalty. To be able to say that it was fair to apply a 18% reduction in settlement I would need some evidence of this and how the calculation was made. But One Insurance hasn't been able to do this from the time of claim or since.

So, in the particular circumstances of this case, I can't say One Insurance has acted fairly in making the reduction, especially given the confusing information that was provided to Mr C about his policy and change in premium. Insurers have a duty to provide consumers with clear information which they need to make informed decisions and it didn't do this.

As such, while I accept that Mr C should have disclosed his true driving position, which is why I don't think Mr C should be awarded any compensation here, One Insurance hasn't clearly evidenced how it has reached the figure of 18%. And as One Insurance hasn't shown that it would've charged Mr C a higher premium, I can't say it has acted in line with CIDRA in making its deduction. And so, I think it would be fair, in the particular circumstances of this case, to refund the reduction in Mr C's settlement following his total loss claim adding 8% simple interest for the time he's been without the money owed.

### **My final decision**

It follows, for the reasons given above, that I uphold this complaint. I require One Insurance Limited to refund the shortfall of 18% in Mr C's claim adding 8% simple interest from the date of its initial payment to the date of final settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 February 2025.

Colin Keegan  
**Ombudsman**