

The complaint

Mr W has complained that Accredited Insurance (Europe) Ltd (AIE) avoided (treated it as if it never existed) his short-term motor insurance policy and refused to pay his claim. He's also unhappy that it caused delays in the claim. He wants it to pay his claim.

What happened

Mr W took out a motor insurance policy with AIE through an online broker's site. When his car was damaged in an accident, he tried to claim on his policy.

After validation checks, AIE declined his claim, avoided his policy but returned the premiums he'd already paid. When Mr W complained, it said he'd answered the question he'd been asked about previous disqualifications for driving incorrectly. And that it considered this to be a careless qualifying misrepresentation, which entitled it to avoid his policy and refuse his claim. But Mr W said he hadn't been asked about previous driving convictions.

Mr W brought his complaint to us, and our Investigator didn't recommend it should be upheld. She agreed there had been a qualifying misrepresentation as AIE had asked Mr W about previous driving convictions and disqualifications, but he had answered incorrectly. And she thought this was a careless misrepresentation as Mr W hadn't fully read the terms and conditions. She also thought AIE hadn't caused any avoidable delays in the claim as these were due to its underwriter's investigations.

Mr W doesn't agree with the Investigator and has asked for an Ombudsman's review, so his complaint has come to me for a final 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.

I can understand that Mr W feels frustrated that his claim for the total loss of his car hasn't been paid. He said he was out of pocket by £3,000 and had lost months of work. I was sorry to hear about this. Mr W said he would send further information for me to consider. He's had a month in which to do this but hasn't provided anything further.

AIE said it had avoided Mr W's policy because he had made a qualifying misrepresentation. So 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. And it must return the premiums.

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.

AIE thinks Mr W failed to take reasonable care not to make a misrepresentation when he stated in his application via a broker's site that he hadn't been disqualified from driving. And I've looked at the assumption he was asked to agree to when he completed the application and I agree he failed to take reasonable care. This is because he was asked:

"Just to check, you must:

Have no more than 6 points on your driving licence in the last 3 years and have no prosecutions, or police enquiries pending.

Have no more than 2 fault accidents, losses/claims within the last 3 years (a pending claim or non-recoverable claim is considered a fault claim)/

Have not been disqualified from driving in the last 5 years"

And I think this was a clear question asked by AIE through the comparison site Mr W used.

Mr W didn't disclose any previous disqualifications. But AIE's later checks found that he had a TT99 disqualification the previous year. Mr W said there wasn't a drop down box where he could list his convictions. But I think it was for him to take reasonable care to read the assumptions he was asked to confirm and to provide accurate information.

And I think this means Mr W failed to take reasonable care not to make a misrepresentation when he didn't disclose his previous disqualification.

AIE has provided evidence of its underwriting acceptance criteria which shows that if Mr W had not made this misrepresentation it would not have covered him at all. This means I am satisfied Mr W's misrepresentation was a qualifying one under CIDRA.

I also think Mr W's misrepresentation was a careless misrepresentation. I say this because Mr W explained that he didn't read the terms and conditions. He said he just continued with his application.

Therefore, I'm satisfied AIE was entitled to avoid Mr W's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, AIE does not have to deal with his claim following the damage to his car. I can see that it has refunded Mr W's premiums.

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

It took about four months for AIE to make its decision to avoid the claim. But AIE explained that as this was a short-term policy and as a claim for injury had been made, it needed to complete extensive indemnity investigations. This took about five weeks. And then it took another two weeks for AIE to make Mr W a total loss offer.

AIE then found that Mr W had a TT99, and it needed to investigate this with DVLA, his broker and the policy's underwriters in order to confirm indemnity. I can see that Mr W was contacting AIE in the meantime in order to chase up his settlement. And AIE has agreed that

there were delays. But I think it was reasonable for AIE to investigate its indemnity. And, as the policy was ultimately declared void, then this didn't cause Mr W any actual loss.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 March 2025.

Phillip Berechree
Ombudsman