

## **The complaint**

Mr D complains about Trinity Lane Insurance Company Limited's decision to cancel his motorcycle insurance policy.

Trinity has been represented by its agents in the handling of the policy. All references to Trinity include its agents.

## **What happened**

Mr D took out a motorcycle insurance policy online in August 2023.

Trinity carried out checks on the information Mr D provided during his application. This was followed by a phone conversation. During this call, it was confirmed the named rider under the policy had an unspent, non-motoring criminal conviction (the conviction).

Trinity cancelled the policy and confirmed this would be recorded. Mr D complained about the cancellation and said Trinity acted unreasonably.

Trinity issued a complaint response in August 2024. It said it cancelled the policy because Mr D didn't disclose the additional rider's conviction when he applied for the policy. It said it couldn't remove the cancellation marker.

Mr D referred his complaint to the Financial Ombudsman Service. He said he made a genuine error when he applied for the policy and the cancellation marker was unreasonable and disproportionate. He wanted details of the cancellation removed from the relevant database or compensation for the impact on his insurance premiums.

The Investigator didn't uphold the complaint. They said Mr D didn't take reasonable care not to make a misrepresentation, and it was reasonable for Trinity to treat this as reckless.

Mr D didn't agree. He said the information provided during the application was misleading, and he quickly corrected his mistake.

## **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.

As this is an informal service, I'm not going to respond here to every point or piece of evidence Mr D and Trinity provided. Instead I've focused on those I consider to be key or central to the issue. But I'd like to reassure both that I've considered everything submitted.

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. 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, 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's 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.

I've considered what's happened in this complaint. Trinity says Mr D didn't disclose the conviction for the additional rider under the policy.

I've reviewed the evidence Trinity provided, to show the questions Mr D was asked, when he took out the policy online. On the matter of non-motoring convictions, there were two questions asked. One was about Mr D's non-motoring convictions, and the other was about convictions for the additional rider. The question about the additional rider was *"Do they have any unspent non-motoring criminal convictions?"* and this included explanatory material that said *"An unspent conviction is a conviction which, under the terms of the Rehabilitation of Offenders Act 1974, is still on your criminal record. Some convictions are removed from your criminal record after a certain length of time, whereas other convictions can stay on a criminal record for life. If you've received a prison sentence of four years or more, your convictions will never become spent..."*

Mr D says he believed the question only related to him as the main proposer. He later said he assumed the named rider's conviction was spent. But having reviewed the evidence, I'm satisfied the question asked of him was clear, particularly as the question about the additional rider's convictions was asked separately to the question about the main policyholder's convictions. And I consider the question included a clear explanation to help Mr D understand what an unspent non-motoring conviction was.

I've listened to the call between Mr D and Trinity, after he'd applied for and taken out the policy. During this call, it was confirmed the additional rider had an unspent non-motoring criminal conviction, and they'd served a prison sentence of more than four years. Considering everything, including the question, the explanatory guidance, and the length of the sentence, I think a reasonable person would've answered 'yes' to the question about unspent non-motoring criminal convictions for the additional rider. Because the evidence shows Mr D answered 'no' to this question when he took the policy out, I don't think he took reasonable care not to make a misrepresentation.

Mr D says he noted the error in the information he provided and proactively made contact with Trinity to correct this. But this is not supported by the available evidence. Instead, the evidence shows Trinity spotted the error when it carried out checks after Mr D completed the application, and this is what led to the call where the correct information was provided. I can also see that in his email to Trinity in August 2023, Mr D acknowledged that he'd been advised of his errors, as opposed to having spotted and corrected them himself, proactively.

I've reviewed the evidence Trinity provided to show what it would have done if there hadn't been a misrepresentation. And I'm satisfied, based on what I've seen, that Trinity wouldn't have offered cover at all if the conviction had been declared.

So it's reasonable to say there's been a qualifying misrepresentation. In these circumstances, where no cover would have been offered, CIDRA allows insurers to avoid a policy from inception.

It appears Trinity cancelled the policy after the call in August 2023, as opposed to avoiding the policy from inception. I'm satisfied in relation to non-disclosure of the conviction, it's fair for Trinity to avoid the policy entirely. Given that it recorded a cancellation after the policy was taken out, when it could fairly avoid the policy, I'm not going to interfere by requiring it to change this. This is because I don't consider its actions left Mr D in a worse off position, as the details of any avoidance would also have been recorded.

Mr D has provided different and contradictory reasons why he gave the wrong answer when he took the policy out. In the initial call after the application, Mr D said it was a genuine error when he filled the information out. He later said the question was misleading and he interpreted it to relate only to his convictions. He then later said he assumed the additional rider's conviction was spent. Given that I consider Mr D was asked a clear and specific question, and given his contradictory reasons, I think it's fair for Trinity to treat the misrepresentation as at the very least, reckless.

This means Trinity would have been allowed under CIDRA to retain the full premium Mr D paid. Trinity gave Mr D a refund of his premium, less time on cover and cancellation charges. I don't think its actions left him worse off than if it had exercised its right to retain his premium, so I don't think it acted unfairly.

I've explained above why I consider Trinity acted fairly in cancelling Mr D's policy in response to his failure to disclose the conviction. Ultimately, it was Mr D's responsibility to take reasonable care not to make a misrepresentation. It follows that I consider Trinity acted fairly in recording the policy was cancelled due to non-disclosure of a criminal conviction. So, I won't direct Trinity to change the information it's recorded.

### **My final decision**

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 D to accept or reject my decision before 23 May 2025.

Monjur Alam  
**Ombudsman**