

The complaint

Mrs S complains that AA Underwriting Insurance Company Limited avoided her policy (treated it like it never existed) and refused to pay her claim.

What happened

Mrs S took out a motor insurance policy with AA through gocompare.com. Several months later she made a claim on her policy. AA said she'd answered the question asked about previous convictions and driving licence endorsements incorrectly. AA considered this to be a careless qualifying misrepresentation, which entitled it to avoid her policy and decline her claim but pay back her premiums.

Mrs S brought her complaint to us and our investigator thought it should not be upheld. She thought AA had acted fairly in the circumstances.

Mrs S doesn't agree with the investigator and has asked for an ombudsman's decision. She believes AA had a responsibility to check that the information she provided was correct and this matter wouldn't have happened if it had done that.

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.

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.

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.

AA thinks Mrs S failed to take reasonable care not to make a misrepresentation when she answered no to the question on gocompare.com's site that asked if, in the last five years, she'd received any motoring convictions, driving licence endorsements or fixed penalties. That's because Mrs S had three points put on her licence in August 2021, just over two years before she bought her policy from AA.

Mrs S said she had forgotten about the points on her licence when she bought the policy. She also said her mind was on other things at the time as her partner was in hospital and later passed away. While I recognise this would have been a very difficult time for Mrs S, I've

looked at the wording on gocompare.com's website and I'm satisfied it clearly explained what information was being sought. AA then sent Mrs S her policy documents and asked her to check the details and make sure they were correct. Mrs S updated the policy about a month later and she was again asked to check the details in the updated documents to make sure they were correct. So, I think it was reasonable for AA to say Mrs S hadn't taken reasonable care.

Because I don't think Mrs S took reasonable care, I now need to decide if it was fair for AA to say the misrepresentation was a qualifying one. That is, did it make a difference? What would AA have done had they known the correct information?

AA has provided evidence from its underwriting guidance. It says it wouldn't have offered insurance to Mrs S had it known about the points on her licence. And the underwriting guidance supports that. This means I'm satisfied Mrs S's misrepresentation was a qualifying one.

In line with CIDRA, I now need to look at whether Mrs S's misrepresentation was careless, as AA says it was. Mrs S said she simply forgot about the points on her licence and, as such, I think AA acted reasonably by classifying it as careless. That's particularly so as classifying it as deliberate or reckless would have given her a less favourable outcome. So, I think AA's classification of careless was the fairest thing to do.

As I'm satisfied Mrs S's misrepresentation should be treated as careless, I've looked at the actions AA can take in accordance with CIDRA. That says that, if the misrepresentation is careless, the insurer can avoid the policy, treat the policy like it never existed (including refusing to deal with any claims) and return the premiums.

So, in light of the above, I'm satisfied AA was entitled to avoid Mrs S's policy in accordance with CIDRA. As this means that – in effect – her policy never existed, AA doesn't have to deal with her claim. It does though have to return her premiums and AA said it did that on 1 July 2024.

As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing AA to rely on it to avoid Mrs S's policy produces the fair and reasonable outcome in this complaint. Mrs S believes AA should have done more to check the information she provided and I'm sure she will find my decision disappointing. But CIDRA is clear about the responsibilities on both parties and particularly the need for consumers to take reasonable care not to make a misrepresentation when they buy insurance.

My final decision

For the reasons set out above, I've decided not to uphold Mrs S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 23 April 2025.

Richard Walker
Ombudsman