

## **The complaint**

Miss H and Mr A have complained that Mulsanne Insurance Company Limited avoided (treated it as if it never existed) their motor insurance policy and refused to pay their claim.

## **What happened**

Miss H took out a motor insurance policy with Mulsanne through an online price comparison site. Mr A was a named driver on the policy. When the car was damaged whilst Mr A was driving it, she tried to claim on the policy.

Mulsanne declined the claim, avoided the policy and kept the premiums she'd already paid. When Miss H complained, it said she'd answered the questions she'd been asked about the car's owner and keeper, motoring convictions and No Claims Discount (NCD) incorrectly. And that it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid the policy and refuse the claim.

Miss H thought this was unfair. She said they had tried to provide Mulsanne with the information it had requested, and they were prepared to pay an additional premium if needed. She said the loss of the car was causing them both stress. She was unhappy with Mulsanne's handling of the claim and its delays.

Miss H brought her complaint to us and our Investigator didn't recommend it should be upheld. He agreed there had been a qualifying misrepresentation. And he thought this was deliberate or reckless. And so he thought it was reasonable for Mulsanne to void the policy and decline the claim.

Miss H doesn't agree with the Investigator and has asked for an Ombudsman's 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 Mulsanne's decision to void the policy and decline the claim has caused Miss H and Mr A stress and upset. I was sorry to hear about the financial impact this decision has had for them.

Mulsanne said Miss H had made deliberate misrepresentations when she took out her policy. 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.

Mulsanne thinks Miss H failed to take reasonable care not to make a misrepresentation when she stated in her application via a comparison site that:

- Neither she nor the named driver, Mr A, had any motoring convictions within the previous five years. But when Mulsanne checked, it found that Mr A had a DR10 conviction two years earlier, and Miss H had a SP30 conviction the previous year. Mulsanne also found that some of the quotes that Miss H generated on the comparison site included the DR10, but not the policy she bought, which was cheaper.
- The policy address was put down as Miss H's home address. The car's V5 registration document and Mr A's driving licence stated a different address than the one stated on the policy. Mr A was unable to provide proof that he now lived at this address.
- The policy was taken out with Miss H as the car's main user and Mr A as a named driver on the policy. Mr A told Mulsanne that they had put Miss H down as the car's main user because it was cheaper than having him as the main user. Mulsanne thought that Miss H had fronted the policy to obtain a cheaper premium. Mr A said Mulsanne had put words in his mouth, but I haven't seen evidence to show that Miss H rather than Mr A, the car's owner and keeper, was the car's main user.

I've looked at the questions asked on the online comparison site about the car's ownership, keeper, and previous motoring convictions. Each question was accompanied by a box that provided more information to answer the questions correctly. And I think these were clear questions asked by Mulsanne through the comparison site Miss H used.

And I think this means Miss H failed to take reasonable care not to make misrepresentations when she said she was the car's main user, that her home was the risk address, and that they had no motoring convictions within the previous five years.

Mulsanne has provided evidence from its underwriters which shows that if Miss H had not made these misrepresentations it would have at least charged her a higher premium. This means I am satisfied Miss H's misrepresentations were qualifying ones under CIDRA.

I also think Miss H's misrepresentations were reckless or deliberate misrepresentations. This is because some of the quotes obtained on the comparison site included the DR10 and SP30 convictions and had either Mr A or Miss H as the main driver with varying NCDs.

The policy that Miss H bought didn't include the convictions and had her down as the car's main driver. I think Miss H was reasonably aware that this information wasn't correct. And Miss H was asked to check that her details were correct before she bought her policy and when she received her policy documents, but she didn't correct these.

Therefore, I'm satisfied Mulsanne was entitled to avoid Miss H's policy in accordance with CIDRA. And, as this means that – in effect – her policy never existed, Mulsanne does not have to deal with her claim following the accident. And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Mulsanne to rely on it to avoid Miss H's policy produces the fair and reasonable outcome in this complaint.

Miss H was concerned about Mulsanne's claim handling and its delays in the claim. She said they incurred transport expenses whilst she waited for the claim to be settled because she wasn't provided with a courtesy car. But from its file I can see that the issues about the claim occurred when Mulsanne sought more information to validate the policy and the claim. I think it's entitled to do this. I don't think it caused any avoidable delays. And so I can't say that it acted unreasonably and unfairly in handling the claim.

### **My final decision**

For the reasons set out 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 A and Miss H to accept or reject my decision before 5 June 2025.

Phillip Berechree  
**Ombudsman**