

The complaint

Mrs N has complained that UK Insurance Limited (UKI) avoided (treated it as if it never existed) her motor insurance policy and refused to pay her claim. Mrs N is represented in this matter by her husband, Mr C, a named driver on her policies.

What happened

Mr C took out motor insurance policies for their two cars with UKI through an online price comparison site. When a car was damaged in a collision, he tried to claim on the policy. UKI declined his claim, avoided one policy but retained the premiums already paid and cancelled the other policy. Their new cover elsewhere was much more expensive because of this.

When Mr C complained, UKI said he'd answered the question he'd been asked about motoring convictions within the previous five years incorrectly. And that it considered this to be a careless qualifying misrepresentation, which entitled it to avoid one policy and refuse the claim. It also cancelled the other policy.

Mr C thought this was unfair as he said he had disclosed the convictions on the aggregator's site, but they hadn't been pulled through to UKI's site. He said they hadn't checked UKI's policy documents. He also said that UKI didn't have Mrs N's consent to set up the policies, and so it couldn't now seek reimbursement for the claim costs. He offered to pay the other driver's claim if UKI removed the avoidance. But UKI declined to do this.

Mr C brought his complaint to us and our Investigator thought it shouldn't be upheld. He agreed there had been a qualifying misrepresentation. And he didn't think this was deliberate or reckless. He believed it was careless. He said UKI was therefore entitled to avoid Mrs N's policy, and it needn't consider Mr C's claim.

Mr C doesn't agree with the Investigator and has asked for an Ombudsman's decision. Mr C disagreed that he'd been careless when completing the application for cover. He thought it was unfair that this had led to a significant increase in his premiums.

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 Mrs N and Mr C feel frustrated with UKI's decision to avoid the policy and decline the claim. They are most concerned about the effect this will have on future premiums. And I can understand that this will be a financial burden for them.

Mr C said he didn't have Mrs N's consent to take out the policies in her name. He's explained that he provided his own email address as a contact for UKI. But Mrs N and Mr C live at the same address. And I'm not persuaded that Mrs N was unaware that Mr C had completed the application for cover.

This is because I can see that Mrs N was an experienced driver who would know that insurance is compulsory, and she hasn't provided evidence that she had alternative cover during this time. And I can't see that she asked UKI to cancel the policy. So I think it's reasonable for me to conclude that Mr C acted on Mrs N's behalf in taking out the policies.

I can't see that Mr C has complained directly to UKI about the cancelled policy, so I won't consider that further here.

As UKI avoided their policy because of misrepresentation, 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.

UKI thinks Mrs N (through Mr C) failed to take reasonable care not to make a misrepresentation when she stated in her application via a comparison site that she and the named driver had no motoring convictions within the previous five years.

And I've looked at the question Mr C was asked when he completed the online application, and I agree he failed to take reasonable care. This is because he was asked:

"Have any drivers had any motoring convictions, driving licence endorsements or fixed penalty points in the last 5 years?"

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

Mr C said he had disclosed two speeding offences, but these weren't transferred to UKI's application. I can't reasonably hold UKI responsible for the comparison site's actions. So if Mr C thinks it made an error he should complain to it directly.

But I can see that these two convictions weren't included on the Motor Proposal Confirmation that UKI sent to Mrs N and Mr C after they took out the policy. The Proposal asks Mrs N to check that the details are correct. And it states both Mrs N and Mr C have *"No convictions, endorsements, fixed penalty notices, disqualifications including points..."*. This was incorrect. But they didn't correct this. Mr C said they didn't open all the policy documents which was unfortunate as the error may then have been avoided.

Mr C provided examples of other applications for cover where he said he had disclosed the two convictions. But from what I can see, the application he made for the policy he bought from UKI didn't include these two convictions.

And I think this means Mrs N and Mr C failed to take reasonable care not to make a misrepresentation when they said they had no motoring convictions within the previous five years.

UKI has provided evidence from its underwriting guide which shows that if Mrs N had not made this misrepresentation it would not have offered her cover at all. This means I am satisfied Mrs N's misrepresentation was a qualifying one under CIDRA.

I also think Mrs N's misrepresentation was a careless misrepresentation. This is because I think Mr C openly disclosed the convictions when he made his claim. And I think he intended to disclose them for the policy, but he didn't, and unfortunately he didn't check this as he was asked to do.

Mr C thought UKI should have checked his licence details with DVLA when he took out the cover. But I think it's for Mr C to answer UKI's questions. Insurers are entitled to rely on consumers providing accurate information and I don't think this is unreasonable.

Therefore, I'm satisfied UKI was entitled to avoid Mrs N's policy in accordance with CIDRA. And, as this means that – in effect – her policy never existed, UKI does not have to deal with her claim following the accident. It has refunded the premiums in keeping with CIDRA.

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

Mr C wanted to negotiate with UKI to repay its outlay for the other driver's claim in return for removal of records of the avoidance and cancellation. But this isn't something I can consider as it's outside the scope of my consideration of Mrs N's and Mr C's complaint. I think it's for Mr C to raise this with UKI directly.

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 Mrs N to accept or reject my decision before 14 July 2025.

Phillip Berechree
Ombudsman