

## **complaint**

Mrs R complains about the actions of Ageas Insurance Limited and its decision to treat her motor insurance policy as though it never existed. Mrs R is represented by her son, Mr T.

## **background**

Mr T took out a policy on Mrs R's behalf in July 2018. In August 2018 the insured vehicle was stolen and Mrs R made a claim on the policy. Ageas noted that although she was the policy holder, Mr T was the car's owner and registered keeper.

When he bought the policy online, Mr T said the car was owned by Mrs R's spouse. That was acceptable to Ageas. But it said it wouldn't have offered a policy to Mrs R had it known that actually Mr T was the car's owner and registered keeper. So it treated the policy as though it had never existed and didn't deal with her claim. Ageas accepted that Mr T hadn't deliberately misrepresented the situation. So it returned the money he'd paid for the policy.

Mr T's phone bill showed he'd called Ageas straight after buying the policy. He said during the 10-minute call, one of its advisors told him the details he'd given online were fine. Ageas couldn't find the call recording, and later on, it found the call hadn't been recorded. But it said its records showed that Mr T was on hold for most of the time recorded on his bill. It said he only spoke to an advisor for just over two minutes. It said the advisor hadn't accessed the policy file, which he would have had to do in order to review its details.

One of our investigators looked into Mr T's complaint. She thought Ageas had shown that Mr T was asked clear questions at the point of sale and gave incorrect responses. She said Ageas had shown it wouldn't have offered cover to Mrs R had it known the facts about the car's owner and registered keeper. She thought it was reasonable for it to avoid the policy and not deal with the claim. She noted Ageas had returned the money Mr T had paid for the policy, as it thought his misrepresentation was careless, rather than deliberate or reckless.

The investigator thought Ageas had shown that only a short part of the call Mr T made to it after buying the policy was spent speaking to an advisor. She thought the evidence that showed the file wasn't accessed by the advisor made it unlikely that he would have been able to discuss specific details of the policy with Mr T. Mr T insisted that in dealing with his complaint, Ageas's 'advisor R' told him she'd listened to the call that it now said it didn't have. As there was no agreement, the complaint was passed to me for review.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I'll set out my view under the headings the investigator used.

### *misrepresentation*

In order to treat Mrs R's policy as though it never existed, Ageas has to show that the provisions of the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) have been met. Mr T had a duty to take reasonable care not to make a misrepresentation when he bought the policy. But for there to be a 'qualifying' misrepresentation under CIDRA, Ageas has to show that it asked clear questions to which Mr T gave inaccurate answers. It

must also show that if he'd given the correct answers, it would have acted differently - by not offering the policy to Mrs R at all, or by doing so on different terms.

Mr T was asked "*Whose name is on the registration document?*" and "*Who owns the car?*" I think those questions were clear. The response 'policy holder' was an option. Mr T was able to select from a list that set out several other options, including 'spouse' and 'other driver'. He selected 'spouse' in answer to both questions, despite the fact that he was the car's owner and registered keeper. Mr T was also a named driver on the policy. Ageas has shown that if Mr T had selected the correct answer - 'other driver' - it wouldn't have offered a policy to Mrs R. So I think there was a qualifying misrepresentation in this case.

Mr T says he made a mistake. He says he didn't know what the word 'spouse' meant and thought it meant 'next of kin'. And he insists that in any event, he called Ageas a few minutes after buying the policy. He says he discussed Mrs R's no claims discount ("NCD") and checked that the details he'd provided online were acceptable. His recollection is that an advisor confirmed the policy was set up correctly.

Mr T also queried why – as he'd said elsewhere in the details he gave that Mrs R was a widow - Ageas didn't pick up on the fact that her spouse couldn't have owned the car. Ageas said its system allows for a car to be owned by a deceased spouse. It says sometimes that will be correct, until the legal processes following a death have been completed. Mr T said Mrs R had been a widow for many years - but Ageas couldn't have known that was the case.

At one point in the online process, Mr T was asked to describe his relationship with Mrs R. The options list included 'son', which is what he selected. Mr T says that shows he didn't intend to mislead Ageas. But Ageas hasn't said that Mr T intended to mislead it.

Ageas thinks Mr T was careless (rather than reckless) and that his misrepresentation wasn't deliberate. It doesn't have to be deliberate or reckless in order for Ageas to avoid the policy. Ageas is entitled to rely on Mr T's carelessness if its underwriting criteria show that it wouldn't have offered Mrs R a policy based on the correct facts. I think it was reasonable for Ageas to conclude that Mr T was careless. And Ageas has provided us with underwriting evidence to show that Mrs R would not have been offered a policy had it known the facts.

#### *call recording*

Mr T says he's suspicious about the missing call recording. He says it would show that Ageas knew the details he'd provided, yet didn't tell him there was an issue with the policy.

The record from Mr T's phone provider shows that he called Ageas just after he bought the policy and that the line was open for over 10 minutes. But the record doesn't show for how much of that time Mr T was speaking to an advisor. Ageas's records show that he only spoke to an advisor for just over two minutes. For the rest of the time he was on hold. Mr T says that's not likely. But consumers often complain that they're on hold for far longer.

If Mr T only spoke to an advisor for just over two minutes, I don't think there would have been enough time to complete security checks, discuss Mrs R's NCD and also check the details Mr T had entered online. Ageas says had the policy file been accessed, it would have left a "footprint" on the system. Ageas has shown us evidence that there isn't one. Mr T says the advisor may have been so confident about the details he discussed with Mr T that he didn't need to check the file. In my opinion, that's not likely.

In the absence of a recording, I have to decide what's most likely to have happened. I've taken into account Ageas's evidence of a timeline for the call, *plus* the lack of a 'footprint' on its system. I don't think Mr T can show it's likely that Ageas's advisor was able to confirm that the details Mr T had entered online were acceptable.

Mr T is unhappy that Ageas's records show the call he made to it was open for a slightly different amount of time to the record from his phone provider. I don't think it's possible to say what caused the discrepancy, but I don't think it makes any difference to the outcome. I don't think there would have been enough time after the call was answered to discuss all the issues, in line with Mr T's recollection.

Mr T says that in a call with advisor R, who was dealing with his complaint, she told him that she'd listened to the missing call. I've listened to the call between Mr T and advisor R. She said she hadn't yet listened to the call. She asked Mr R if he could recall who he'd spoken to. He said he couldn't. He said that was why she needed to listen to the call. Towards the end of their conversation, Mr T referred to the call again. Advisor R said she'd be looking into it. So Mr T's recollection of advisor R saying she'd listened to the call is incorrect.

As a result of Mrs R's policy being avoided, and her claim not being dealt with, Mr T has found himself in a very difficult position financially. And Mrs R will have to tell other insurers that she has had a policy set aside. I understand why they may both think Ageas's decision is harsh, given its consequences. But I don't think there's any evidence that Ageas acted unreasonably, so I can't uphold Mrs R's complaint.

### **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 Mrs R to accept or reject my decision before 13 June 2019.

Susan Ewins  
**ombudsman**