DRN-4500656

The complaint

Mr P complains that One Insurance Limited (One Insurance) avoided his motor insurance policy and refused to pay his claim after his pickup truck was hit by a third party.

What happened

Mr P took out a van insurance policy with One Insurance via a price comparison website. It was a van insurance policy due to the type of vehicle it was (a pickup truck), but it wasn't being used for commercial purposes. Instead, Mr P used it for social, domestic and pleasure purposes, as an individual consumer rather than a business.

Whilst parked, Mr P's vehicle was hit by a third-party, so he contacted One Insurance to make a claim and his vehicle was recovered from the scene.

However, One Insurance said Mr P answered the question they asked about modifications incorrectly when taking out the policy. And One Insurance considered this to be a careless qualifying misrepresentation, which entitled them to avoid his policy, decline his claim and return the premiums paid for the policy.

Mr P was unhappy with One Insurance, so he brought his complaint to this service.

One of our investigators looked into things but she didn't uphold the complaint. She thought One Insurance had taken reasonable actions in avoiding the policy, declining the claim and returning the premiums.

Mr P didn't agree and asked for a final decision from an ombudsman.

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.

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. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

One Insurance thinks Mr P failed to take reasonable care not to make a misrepresentation when he took out the policy. One Insurance says Mr P should have disclosed that his vehicle had been modified, which included a modified bonnet, roll bars and large stickers had been added to the bodywork.

I've looked at the question Mr P was asked when taking out the policy via the comparison website.

This asked:

> *"Has the van been modified in any way?"*

It then explained:

> *"A vehicle is considered modified if it has been changed in any way since it was first supplied by the manufacturer.*
>
> *This would include:*
>
> *Changes to the body work, suspension or brakes, cosmetic changes and changes to the engine management system or exhaust system. If you are unsure whether changes to the vehicle are classed as a modification, please check with your chosen provider before purchasing."*

Mr P answered 'no' to this. Mr P says that he was told when buying his vehicle that the bonnet and roll bars were standard so he didn't think they would be classed as modifications. Mr P also said that he didn't think he needed to disclose the large stickers he'd added to the bodywork as he didn't think they would be classed as a modification as they didn't change the performance of the vehicle.

Even if I was to accept Mr P was of the understanding the bonnet and roll bars were standard so he didn't think he needed to disclose these as modifications, he added stickers to his vehicle. I think the question outlined above was clear in outlining both changes from the way the vehicle was from the manufacturer, and cosmetic changes, would be classed as a modification which needed to be disclosed. I think Mr P should have answered 'yes' based on the stickers he had added or, at the very least, queried whether the stickers would be considered as modifications with the insurer – as set out in the guidance supporting the question he was asked (above). So, I don't think Mr P took reasonable care not to make a misrepresentation when he said his vehicle hadn't been modified.

One Insurance has provided its underwriting criteria to this service to show what they would have done if Mr P had declared that his vehicle had been modified. I can't share this in full as it is commercially sensitive. However, I'm satisfied One Insurance has demonstrated it wouldn't have offered cover if Mr P had disclosed the modifications. Whilst Mr P says he thought the roll bar and bonnet were standard, I'm satisfied they also wouldn't have offered cover if he had declared the stickers he had added.

This means I'm satisfied Mr P's misrepresentation was a qualifying one.

One Insurance has said Mr P's misrepresentation was careless, rather than deliberate or reckless. Mr P could have contacted One Insurance if he was unsure whether the stickers would be a modification, based on the questions and information presented during the sale, but he didn't do so. I think One Insurance has acted reasonably in classing Mr P's misrepresentation as careless.

As I'm satisfied Mr P's misrepresentation should be treated as careless, I've looked at the actions One Insurance can take in accordance with CIDRA.

This outlines that in the event of a careless misrepresentation, where the insurer would not have entered into the consumer contract on any terms, as is the case here, the insurer can avoid the policy and refuse all claims but will need to return the premiums.

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

Therefore, I don't think One Insurance has acted unfairly.

Our investigator also explained to Mr P that One Insurance has been unable to recover their outlay on the claim for recovery and storage charges so far, so there is currently an open claim recorded. Once they have recovered their outlay, this would then be amended to notification only. I don't think that's unfair. She also explained that a fault claim being recorded doesn't necessarily mean the policyholder is responsible for the accident, instead it means an insurer has been unable to recover their outlay.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 4 January 2024.

Callum Milne
Ombudsman