

The complaint

Mr Z complains Aioi Nissay Dowa Insurance UK Limited (AND) avoided his motor insurance policy (treated it like it never existed) and reported him to CIFAS.

AND, as the underwriter of the insurance contract, is responsible for this complaint. Another company administers the contract. For ease I'll refer to both their actions as Advantage's actions.

What happened

Mr Z took out a motor insurance policy with AND online through a price comparison website to start in May 2022. He declared five years no claims discount (NCD) and no motor claims, accidents or losses in the 5 years before.

In July 2022, AND told Mr Z he needed to send it proof of his NCD and confirm it wasn't being used on another policy. It warned, if he didn't respond with the evidence within 7 days, his policy would be cancelled. Mr Z replied and mentioned another vehicle. As this didn't answer the question, AND wrote to Mr Z again on 9 August asking for the same information.

On 12 August, Mr Z asked AND if it'd agree to merge two insurance policies together, but it said it didn't offer policies which insure more than one car. The call handler reiterated the information which had been requested and Mr Z confirmed he'd respond.

On 13 August, Mr Z emailed AND attaching a handwritten signed letter to confirm the NCD wasn't being used on any other policy. An undated document was also provided from a different insurer, who I'll call D, which stated Mr Z had 5 years NCD from 20 March 2015 - 20 March 2022 and a non-fault claim from 2019. D was contacted by AND but had no record of Mr Z ever having had a policy with it.

On 26 August, AND wrote to Mr Z asking him to explain this with a deadline of 6 September to prevent the policy being cancelled on 7 September. On 3 September, Mr Z emailed to ask AND to cancel his policy.

In late September, AND wrote to Mr Z to say he'd deliberately or recklessly misrepresented his NCD and failed to explain why D couldn't validate this. AND considered this a deliberate or reckless qualifying misrepresentation which entitled it to avoid his policy and keep his premium. It also made an entry to CIFAS.

Mr Z said the call handler gave him the wrong information and he didn't know he couldn't use his NCD on two cars. He was unable to access his home due to family issues and was suffering from depression. As a result, he asked his son to locate the proof of NCD. As he'd son had either misplaced his paperwork, or his wife had thrown it away, Mr Z suspected his young son must have created the NCD evidence as he was concerned about Mr Z's mental health and what would've happened if he didn't find it. Mr Z said he didn't notice it was a falsified document due to an eye condition and wearing old glasses. He asked AND to remove the CIFAS warning as he was finding it difficult to obtain a credit card and keep a job. Also, as he'd sold the car, AND should've cancelled his policy when he asked it to.

AND didn't change its view, so, Mr Z brought his complaint to this service. He doesn't think the way AND has acted is fair. To put things right, he says the insurer should put this down to miscommunication and human error and clear the note on his financial record.

The Investigator looked into matters and agreed there had been a deliberate qualifying misrepresentation, so, AND was entitled to take the steps it had. Mr Z doesn't agree with this and made a number of points including the following.

- He was clear he wanted to use the existing NCD he had on this car, rather than the one it was already being used on. But he also says it was always the intention to sell the car so why would he need to use two NCDs.
- Due to his eyesight, he won't be able to drive soon so his NCD won't be needed.
- His email account was hacked.
- In a phone call to AND, he was told he could cancel the policy at any time.
- He's reported his son to the police and says should be treated as the victim.

The matter has now been passed to me for a 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.

Having done so, I must tell Mr Z I think the investigator has reached a fair outcome here. So, I don't uphold his complaint in this matter. I'll explain why.

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 the 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 must 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.

AND says Mr Z failed to take reasonable care not to make a misrepresentation when he answered questions about his NCD and said he had five years NCD which he wanted to use on this policy. Mr Z has made a number of points about why his choice was reasonable and this was a miscommunication. However, during the online sales process, Mr Z was asked how many years of NCD he had, and he input five years NCD. But his NCD was being used on a different policy. It was made clear through explanatory information when this question was asked a customer can only use their NCD on one car or insurance policy at a time. I'm therefore satisfied AND's position here is both fair and reasonable.

Even so, if there had been a misunderstanding about this, I'd have expected Mr Z to explain this to AND at any of the points he was asked about his NCD. Instead, it was only once his policy had been avoided that Mr Z said there was a miscommunication and, as a result, his young son forged evidence of a NCD and sent this to AND on his behalf.

It was made clear in the online comparison journey how important it is to answer the question correctly. I've also seen this was repeated on the Important Information Document. And I haven't seen any evidence to suggest the insurance policy offered by AND would've been on the same terms if it'd been given accurate information - that Mr Z didn't have any NCD to use on this policy. So, I'm satisfied Mr Z's representation was a qualifying one.

AND considers Mr Z's representation was deliberate or reckless. In light of the information set out above, I see no reason to interfere with this.

As I'm satisfied Mr Z's representation should be treated as a deliberate or reckless qualifying misrepresentation, I've looked at the actions AND can take in accordance with CIDRA. I agree AND was entitled to avoid Mr Z's policy in accordance with CIDRA from the inception of the policy. This means - in effect - his policy never existed. Also it can keep the premium paid. Again, considering everything, I see no reason to interfere with AND's decision here.

I note Mr Z says he tried to cancel the policy on 3 September and AND should've followed this request. However, the ability of AND to avoid the policy under CIDRA takes away any risk it had while the policy was in place. Given Mr Z accepts a falsified document was submitted to AND (irrespective of who falsified it), I don't consider it's for me to interfere with its decision to avoid Mr Z's policy notwithstanding that he'd asked to cancel it. I also consider its action in making an entry to CIFAS to be fair and reasonable in all the circumstances.

Having considered all the circumstances in this matter, I'm satisfied the above is a fair and reasonable way to resolve this complaint.

I note Mr Z says AND is to blame as this was clearly a mistake which AND knew and is trying to take advantage of. I also note he says AND misled him on using his NCD. I don't see things the same way. Mr Z was obliged to provide accurate information in his answers, taking care not to make a misrepresentation. I've already found Mr Z failed to do this and so, whilst I acknowledge this will undoubtedly be having a significant impact on his wellbeing and financial situation, AND isn't responsible for the position Mr Z now finds himself.

My final decision

For the reasons set out above, I don't uphold Mr Z's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 19 September 2023.

Rebecca Ellis
Ombudsman