

The complaint

Mr A complains that KGM Underwriting Services Limited mishandled his claim on a motor insurance policy.

What happened

In late November 2022, Mr A used an intermediary to take out insurance for a vehicle. He said that he was self-employed. He took out insurance with KGM, starting from December 2022.

Later that month, Mr A reported his vehicle stolen.

Much of the complaint is about acts or omissions of claims-handlers on behalf of KGM. Insofar as I hold KGM responsible for them, I may refer to them as acts or omissions of KGM.

Mr A said that in November 2022 he had been an unpaid trainee at a business. The business owner provided a letter to that effect.

By a letter dated April 2023, KGM said that when applying for the policy, Mr A had deliberately misrepresented his employment status. KGM said it was treating the policy as void and declining to meet the claim for theft.

Mr A complained to KGM that it should pay the claim.

By a final response dated late July 2023, KGM turned down the complaint.

In early October 2023, Mr A's solicitors brought his complaint to us.

Our investigator recommended that the complaint should be upheld in part. She thought that KGM had been reasonable to say that Mr A had made a qualifying misrepresentation under Consumer Insurance Disclosure and Representations Act 2012 ("CIDRA"). So KGM had fairly avoided the policy and refused all claims.

However, the investigator didn't think that KGM had acted fairly by categorising the misrepresentation as deliberate. She said that it should be recorded as careless. She recommended that KGM should:

1. return any premium that Mr A had paid for the policy year in question; and
2. pay interest on this premium refund, as calculated from the date the policy was voided up to the date the premium refund payment is returned, at 8% a year simple interest.

KGM accepted the investigator's opinion.

Mr A disagreed with the investigator's opinion. He asked for an ombudsman to review the complaint. His solicitors say, in summary, that:

- Mr A was an employee during the times of his training as it was a three-month period of training, and he was being rewarded in training and occasional hand- outs.

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.

CIDRA imposes a duty on a consumer when taking out a policy to take reasonable care not to make a misrepresentation. CIDRA says that if the consumer makes a misrepresentation that is a qualifying misrepresentation, then the insurer can take certain actions.

The intermediary asked Mr A a question as follows:

'what is your employment status?'

I'm satisfied that this question was clear and specific.

Mr A answered that he was self-employed. I don't consider that Mr A's answer was correct. His solicitors initially told us he was self-employed, but they haven't provided enough evidence of that. Rather they have said that in late November 2022 he was employed. So I consider that Mr A had made a misrepresentation that he was self-employed.

As there's not enough evidence that Mr A was self-employed, I'm not satisfied that Mr A took reasonable care not to make a misrepresentation that he was self-employed.

Mr A's solicitors have suggested that Mr A was in fact an employee. However, I consider that the absence of any wage means that he wasn't an employee. I find it more likely than not that Mr A was unemployed when he took out the policy.

I consider that the misrepresentation made a difference to KGM. From its underwriting criteria, I find that, If Mr A had said he was unemployed, KGM wouldn't have issued a policy for him. So I consider that the misrepresentation was a qualifying misrepresentation under CIDRA.

I find that the misrepresentation was careless. KGM has accepted the investigator's opinion that the misrepresentation wasn't reckless or deliberate.

Mr A had made a qualifying misrepresentation and KGM wouldn't have issued a policy for him. So I'm satisfied that CIDRA allowed KGM to treat the policy as void and to decline his claim.

Treating the policy as void includes refunding the premium unless the misrepresentation was reckless or deliberate.

Putting things right

I've found the misrepresentation careless rather than reckless or deliberate. So I find it fair and reasonable to direct KGM to refund the premium. As Mr A will have been out of pocket since he paid the premium, I find it fair and reasonable to direct KGM to pay interest at our usual rate.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct KGM Underwriting Services Limited to:

1. refund Mr A's payment of premium for the policy it treated as void;
2. pay simple interest on the amount of such refund at a yearly rate of 8% from the date of Mr A's payment to the date of the refund. If KGM considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr A how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 May 2024.

Christopher Gilbert

Ombudsman