

The complaint

Mr P complains that Pukka Insure Limited (Pukka) avoided his policy (treated it as though it never existed) and declined his claim following the theft of his car, under his motor insurance policy.

What happened

Mr P's car was stolen in November 2022. He contacted Pukka to claim under his policy. He says Pukka avoided his policy saying he used it for works purposes. Mr P says he has a van that he uses for work. He says the telematics device installed in his car will prove where his car was. Mr P says Pukka should pay his claim.

Pukka told Mr P his policy had been avoided because he regularly used his car for business purposes. This involved traveling between different jobs and to carry and store tools and equipment. Pukka says that "*carriage of own goods*" isn't an acceptable use of a private car policy. It says it wouldn't have provided cover had Mr P declared this.

Pukka told Mr P he'd carelessly misrepresented the information he provided when taking out his policy. It refunded his insurance premiums but confirmed it wouldn't indemnify him for his loss.

Mr P thought this was unfair and referred the matter to our service. Our investigator didn't uphold his complaint. He says Mr P told Pukka he was going to use his car for social, domestic, pleasure and commuting purposes. He says this type of use doesn't include the carriage of tools and equipment for a business. Our investigator says Pukka had shown it wouldn't have covered Mr P had he provided accurate information about the use of his vehicle.

Mr P didn't think this was fair. He says the information from the telematics device in his car hasn't been provided. He says this will show his car was generally parked up Monday to Friday between 9am and 5pm. He says it wasn't used for working and his tools were always kept in his employee's work van. Because he disagreed Mr P asked for an ombudsman to consider his complaint.

It has been passed to me to decide.

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'm not upholding Mr P's complaint. I'm sorry to disappoint him but I will explain why I think my decision is fair.

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.

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 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 several 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.

Pukka thinks Mr P failed to take reasonable care not to make a misrepresentation when he responded to the question in his insurance application that asked, "*What do you use the car for?*". I've looked at the responses Mr P could choose from during his online application. The options were:

"Social, domestic and pleasure only (SDP); Social, domestic, pleasure and commuting (SDPC); or SDPC and Business use"

The Statement of Fact document provided at Mr P's policy renewal in April 2022, shows he chose SDPC. The document explains to Mr P that he must check the information provided is accurate. If anything isn't accurate, he should contact his insurance intermediary immediately. It also explains that if the information isn't accurate, it could mean a claim being declined or the policy could be cancelled.

Mr P signed a witness statement following an interview that was arranged by Pukka about his theft claim. The following excerpts from this statement are of relevance here:

"In the main, I do not use the [car] in connection with my employment, but I do sometimes use it to travel to jobs that may be local to the [location] area. If the job is outside of [location], I travel with work colleagues in a works van."

And:

"In the week before the theft I had been working in [location] at [business name], fitting fire alarms in their warehouse. With it being a local job, I used my [car] to travel to and from the job from my home address."

Also:

"I did have £3,000 worth of tools stored in my [car] that I was transporting from home to and from the job I was working on in [location]. The tools were stored in the boot out of sight and they were stolen along with my [car]."

Mr P told Pukka he only used his car for the purposes of SDPC. Yet in his statement he confirmed he used the car to travel to jobs he worked on in the local area. He also says he carried £3,000 worth of tools in his car. I've thought about whether Mr P took reasonable care not to make a misrepresentation here. I don't think he did.

I say this because there was an option to include business use when Mr P made his insurance application. I don't think travelling to different locations for business purposes, whilst transporting £3,000 worth of tools, reasonably fits within social, domestic or pleasure uses. I've thought about whether Mr P's situation reasonably fits with 'commuting'. I can't see that this is defined in his policy terms. So, I've considered what an ordinary everyday use of the word might mean.

A dictionary definition of commuting available online defines commuting as, "*to travel some distance between one's home and place of work on a regular basis*". Another online dictionary defines commuting as, "*the activity of travelling regularly between home and work*". In his statement Mr P says he uses his car to travel to jobs when they are local. Mr P's occupation means that he regularly works for different customers. This means regularly travelling to different places, not one place of work.

I don't think Mr P's use of his car, as confirmed in his witness statement, reasonably fits with the ordinary everyday meaning of the word commuting. I think it's more reasonably accepted to mean travel to and from a fixed place of work. Because of this I don't think Mr P took reasonable care not to make a misrepresentation when answering this question.

In its decline letter to Mr P, Pukka says carrying and storing tools and equipment in a vehicle is known as "*carriage of own goods*". It provided our service with its underwriting criteria that shows it wouldn't offer cover at all where a vehicle is being used for this purpose. Pukka's underwriting criteria is commercially sensitive, so I can't share it. But I'm satisfied that this means Mr P's misrepresentation was a qualifying one.

I think Pukka's decision to treat Mr P's misrepresentation as careless is fair. I don't think he meant to provide inaccurate information. He explains how he uses a work van to get to jobs that are some distance away but uses his car for local jobs. He may have thought this should be covered under his policy. But the test here is that of what a reasonable person would think. I don't think a reasonable person thinks driving a car to different jobs, whilst carrying £3,000 worth of tools, fits with the answer Mr P gave about his usage.

In these circumstances CIDRA allows Pukka to avoid Mr P's policy and decline his claim. It must reimburse the premium he paid, which it says has already been done.

I acknowledge what Mr P says about the tracker device. But I don't think this information would make a difference to the outcome. Given that he effectively told Pukka he used his car for business purposes. I also note what he says about the interview taking a long time and that he needed to collect his daughter. Because of this Mr P says he didn't get chance to read the statement in full.

I don't dispute Mr P's comments. But he signed the witness statement to confirm its contents were accurate. I don't think Pukka treated him unfairly when relying on this information to avoid his policy.

Having considered all of this I don't think Pukka treated Mr P unfairly, when relying on its policy terms and avoiding his policy for the reasons it gave. It treated him fairly when considering his misrepresentation as careless and in refunding his policy premiums. Because of this I can't reasonably ask it to do anymore.

My final decision

My final decision is that I do not 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 23 October 2023.

Mike Waldron
Ombudsman