

The complaint

Miss J has complained about her car insurer One Insurance Limited (OI) because it avoided her policy (treated it as though it had never existed) on grounds of misrepresentation and, by association, declined her theft claim.

What happened

Miss J was buying a new (to her) car. Her partner was mostly dealing with the purchase on her behalf. She arranged the insurance, advising OI she was the registered keeper. The car was collected the next day, a Saturday, 20 May 2023 and the policy began. Miss J's partner was logged as the registered keeper of the car. On Tuesday, in the early hours of the morning, the car was stolen. Miss J made a claim to OI.

OI noted the registered keeper details differed to that Miss J had given when arranging the cover. Miss J was asked why she had said she was the registered keeper. She said she thought her partner would put it in her name, but he put it in his. It said that as she had given incorrect information (that she was the registered keeper when, in fact, that was her partner) it was voiding her cover and declining the claim.

In a letter of 14 June 2023 Miss J told OI that the intention had been for her to be the registered keeper, and she had filled out the application accordingly. But then the seller, acting in good faith, based on an assumption, incorrectly said her partner was the registered keeper. Miss J said the information she had given was correct to the best of her knowledge at the time. In a final response letter of 21 July 2023, OI said that had it been told Miss J's partner was the registered keeper, it wouldn't have offered cover. It felt it had acted fairly and reasonably in avoiding the policy and declining the claim.

Miss J complained to the Financial Ombudsman Service. She said again that there had been an error by the seller, which she felt had caused OI to think there had been a misrepresentation when there hadn't been. When she spoke to our Investigator, Miss J said she hadn't realised the seller would use her partner's contact details to put the car in his name and that they intended to tell the seller to put the car in her name. She'd expected to have a conversation with the seller about this, but he recorded her partner as registered keeper before they'd had chance to do so. Miss J then said she spoke to her partner, and he had recalled telling the seller to put the car in his name.

Our Investigator felt Miss J hadn't taken reasonable care to be sure to give OI the correct details about the car's registered keeper. She noted OI wouldn't have given cover where a partner to the policyholder was the registered keeper of the car. So she felt OI had acted fairly and reasonably in avoiding the cover and declining the claim.

Miss J was unhappy with the outcome. She said she had taken what could be considered to be reasonable care for her, as a person with a recent referral for testing for a neurodivergent condition. She noted the relevant legislation and said that OI hadn't made enough enquiries or investigated adequately to reasonably conclude she hadn't taken reasonable care. Miss J said OI hadn't made her aware of the importance of its question about who the registered keeper was and what her relationship status was with her partner – so she hadn't seen any

urgent need to update it about the error by the seller. And nothing in the policy wording suggested to her that OI would have difficulty offering her cover.

Miss J also said that her partner had described to her that he remembered having a conversation with the seller where (she says) he told the seller “that the car would be a family car but also explained that he had a company vehicle, so the car would be mine”. And, following her and her partner having a conversation about whose car this would be, she filled out the insurance application. She later told our Investigator that when she filled out the application her partner had been sitting with her – and regarding the registered keeper, he had said she had given the correct details, that he had already confirmed that with the seller. Miss J told our Investigator that she’d had to check with her partner what had happened as she finds it difficult to recall things accurately.

Our Investigator replied to Miss J’s points. She confirmed her view on the complaint had not changed. The complaint was referred for an Ombudsman’s 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.

I understand that this is very important and upsetting issue for Miss J. But with regret for the additional upset I know this will cause her, I’m not upholding her complaint.

Misrepresentation

If a prospective policyholder makes a mistake or fails to answer an insurer’s question when applying for a policy, this is known in the insurance industry as misrepresentation. A misrepresentation can have serious consequences for both parties. So there is legislation which sets out the rights and obligations of both parties regarding policy applications.

CIDRA

The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) requires a prospective policyholder to take reasonable care to not make any misrepresentation to the insurer when applying for cover. If a misrepresentation is made which is a *qualifying* misrepresentation, then the insurer will be allowed to take certain action.

Qualifying misrepresentation

Whether or not a misrepresentation is seen to be a qualifying one depends on two things. First, did the prospective policyholder take reasonable care when they gave the answer they did? Second, can the insurer show that if correct/full detail had been, it wouldn’t have entered into the insurance contract, or it would, but only on different terms? What the insurer would have done is often a matter of fact – and I have seen evidence in that respect here which I’ll come onto shortly. Whether the prospective policyholder took reasonable care will depend on a variety of factors and, in my view, is the real issue at the heart of this complaint.

What the insurer would have done differently

All insurers consider risk and make decisions about what risks they are and are not prepared to offer cover against. What is acceptable to one insurer may not be to another, or may be but only with certain restrictions being applied, or an extra excess or increased premium being charged. Appetite for risk is a matter for an insurer's commercial judgement and as long as an insurer treats everyone in similar circumstances the same, this service won't interfere. And an insurer's appetite for risk is usually commercially sensitive detail – so it isn't something which is shared with policyholders or detailed in any way in the policy documents. Rather, an insurer asks questions about the issues of importance to it and, usually at the end of an application, confirms that the applicant understands that those questions must be fully and correctly answered. I note OI did that here.

Partly to ensure everyone is treated the same, OI, as do many insurers, has a list of risks it will accept. Anything outside of that list is unacceptable to OI. OI's list shows that it will accept an application from a policyholder who is not the registered keeper of the car if the registered keeper is their spouse. As Miss J and her partner are not married, I accept that with the vehicle documents recording him as the registered keeper, that would have made Miss J an unacceptable risk for OI. In other words it would not have offered a policy to her.

Reasonable care

When Miss J arranged this policy, she was asked who "is" the keeper of the car. The application was pre-populated with "proposer/policyholder". Miss J thought that was correct so left it that way.

I think the question asked was clear. And it was clear, with the use of "is", that the situation, as it stood at the point of application, was being asked about. OI wasn't asking about what the intent of the proposer was, or what arrangements they thought had been made. It was up to Miss J to take reasonable care to answer that question to the best of her knowledge.

The legislation clarifies that the reasonable care standard is that of a reasonable consumer. The legislation doesn't set different standards for anyone who feels or can show they do not operate other than a reasonable consumer would. Although the legislation does require an insurer, when considering if reasonable care was taken, where it knew or should reasonably have known of a particular characteristic or circumstance which might affect the applicant's conduct, to take that into account. Here, Miss J has not yet had a diagnosis for her condition, and, with her only just applying for the policy, she had not had a chance to tell OI about that. I know Miss J had recently had a burglary at her home too – but I think it's fair to say that a reasonable consumer would be operating under various stresses and strains like this. I don't think there was any characteristic or circumstance OI knew or should reasonably have known about for it to take into account when considering whether or not Miss J had taken reasonable care.

That said I note that Miss J herself was aware at the time of purchasing the car and arranging the insurance, that she, for a number of reasons, was suffering incredible pressure and stress. I understand that Miss J has recently said her partner helped her with the application – or at least sat with her, offering advice where requested about answers Miss J gave. And she's said she's now checked with him also about what happened during the purchase of the car, particularly as she has difficulty remembering. But I note that within a few weeks of the policy being arranged, Miss J told OI that whilst she thought the car was going in her name, her partner had put it in his name. And in the 14 June 2023 letter that the seller had made an assumption about who the keeper would be. Even if Miss J had been confused or somewhat unaware of the exact circumstances of the purchase when she initially verbally answered OI's questions, she'd had a chance to check all of that when she

wrote her letter of 14 June 2023. At no time did Miss J say she'd checked with her partner how the purchase had been arranged or that he'd helped her with the application. And this service often views the detail given closest to the occasion to be the most accurate.

I totally accept that Miss J intended to be the keeper for this car. That she and her partner had agreed that would be the case. But I don't think that Miss J, or her partner acting for her in the purchase of the vehicle, were specific enough with the seller to ensure that happened. And whilst I realise that the sale eventually completed at a pace, neither Miss J nor her partner confirmed in writing with the seller what their intentions were. Consequently the seller did not advise Miss J, or her partner that the car had been registered or would shortly be registered in the partner's name. So Miss J answered OI's question based on what she believed would happen – without confirming matters. I'm satisfied that OI's view that Miss J did not take reasonable care when arranging the cover with it was fair and reasonable.

What does CIDRA allow OI to do

I'm satisfied that it was fair and reasonable to say Miss J did not take reasonable care, and I've seen that OI would have acted differently if it had been told Miss J's partner was the registered keeper. Which means I'm also satisfied it was fair and reasonable for OI to think a qualifying misrepresentation was made by Miss J. Where a qualifying misrepresentation is made, CIDRA allows the insurer to act as it would otherwise have done. Here, if Miss J had checked with the seller and been told the car would go in her partner's name, and she'd told OI that in her application – I'm satisfied that it wouldn't have offered a policy to her. OI avoided Miss J's policy, refunding her the premium paid. In the circumstances, I think that was in line with the legislation. I'm satisfied OI acted fairly and reasonably.

My final decision

I don't uphold this complaint. I don't make any award against One Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 17 November 2023.

Fiona Robinson
Ombudsman