

The complaint

Mr V complains that Sabre Insurance Company Limited ('Sabre') avoided his motor insurance policy, retained his premiums and declined his claim.

Sabre are the underwriters of this insurance policy. Some of Mr V's complaint concerns the actions of Sabre's appointed agents. As Sabre accept they are responsible for the actions of their agents, any reference to Sabre should be interpreted as also covering the actions of their appointed agents.

What happened

The background to this complaint is well known to Mr V and Sabre. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

Mr V was unable to resolve his complaint with Sabre and referred it to our Service for an independent review. Our Investigator considered the complaint but didn't recommend that it be upheld. As Mr V remains unhappy, the complaint has now been referred to me for a final 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

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.

Sabre thinks Mr V failed to take reasonable care not to make a misrepresentation when he took out this insurance policy – for a number of reasons. They say he provided inaccurate answers to questions about previous motoring convictions, previous claims, his employment and the car's overnight location.

I've looked at the questions Sabre say Mr V would have been presented with at the point of taking out this policy in July 2022. Having done so, on balance, I'm satisfied that Sabre haven't been unreasonable in saying that Mr V failed to take reasonable care. I say this because:

- The question relating to driving offences states: *"have you had any driving related convictions, endorsement, penalties, disqualifications or bans in the past 5 years?"* Options for 'yes' and 'no' were provided. Mr V answered 'no'. This was an inaccurate answer - as the evidence shows he had a SP50 conviction from 2019. I have considered what Mr V has said about it being expired, but the question was clear – the insurer wanted to know about anything in the last 5 years.
- The question relating to previous claims asked: *"have you had any motor accidents, claims or losses in the past 5 years, no matter who was at fault or if a claim was made?"* Mr V didn't declare any and Sabre have referred to evidence that Mr V had cars stolen in 2019 and 2021. Mr V also referred to this in his statement to Sabre dated 11 July 2023.

Sabre have also pointed to a question about Mr V's employment. However, I'm satisfied that Mr V answered what he felt was accurate at that point in time – as his role changed frequently. I don't find that Mr V failed to take reasonable care on this specific point.

Sabre have referred to Mr V failing to take reasonable care when answering a question about the location of where the car would be kept overnight. Mr V referred to previously paying an additional premium (£899.64) when he update his home address. Sabre have said that at the point of updating his address Mr V failed to let them know that the car would kept on the street when not in use.

Whilst the above may still be relevant, I'm primarily considering what happened at policy inception and, given the two points I've highlighted above (the questions about driving offences and motoring convictions), I don't need to make a finding on the point about where the car was kept as, overall I'm satisfied that Mr V didn't take reasonable care to not make a misrepresentation at policy inception.

Sabre have said if accurate information been provided, they'd still have offered cover - but on different terms. A higher premium would have been charged. Therefore, I'm satisfied that this was a qualifying misrepresentation as Sabre have provided an explanation and the relevant underwriting criteria to support this.

Sabre have said they regard Mr V's misrepresentation to be deliberate or reckless. The relevant law here, CIDRA, says a qualifying misrepresentation is considered careless if it isn't deliberate or reckless. The act says

"A qualifying misrepresentation is deliberate or reckless if the consumer –
(a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and

(b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer"

On balance, I find that Sabre have reached this position fairly. I say this because Mr V ought to reasonably have been aware that some of the information he was giving in response to multiple, relatively clear questions was inaccurate. Specifically on the question about motoring convictions, Mr V has argued that it wasn't made clear that Sabre wanted to know about all convictions – not just those recorded against his driving record/license. However,

having returned to the question asked, I'm satisfied it was made clear that Sabre wanted to know about any driving related offences in the previous five years.

I'm satisfied Mr V's misrepresentation can be treated as deliberate or reckless, I've looked at the actions Sabre can take in accordance with CIDRA. Here, Sabre have avoided the policy from inception (treated as if it never existed) and retained the premiums. As I've found that Sabre have fairly acted in line with the remedies allowed for under CIDRA, it follows that I won't be going on to make any findings on the actual loss event/claim here - as this policy effectively was never in place (for the purposes of this claim) and Sabre don't need to deal with the claim.

My decision will disappoint Mr V, but it brings to an end our Service's involvement in trying to informally resolve this dispute between him and Sabre.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 1 October 2024.

Daniel O'Shea
Ombudsman