

The complaint

Ms S complains that Trinity Lane Insurance Company Limited would only pay her a proportionate settlement for the value of her motorhome after it was declared beyond economical repair. She was also unhappy with its delay in settling her claim. She wants it to pay her the motorhome's market value.

What happened

Ms S renewed her motorhome insurance policy with Trinity Lane through a broker. When her motorhome was stolen and later recovered damaged, she tried to claim on her policy. The motorhome was declared to be beyond economical repair. But Trinity Lane wouldn't pay her the motorhome's market value, only a proportion of this.

When Ms S complained, Trinity Lane said she'd answered the question she'd been asked about the motorhome's current value incorrectly. And that it considered this to be a careless qualifying misrepresentation, which entitled it to settle the claim for the motorhome and also Ms S's personal possessions proportionately. But it said it had caused avoidable delays in the claim and it waived Ms S's £325 policy excess as compensation for this.

Ms S brought her complaint to us, and our Investigator thought it should be upheld. He didn't agree there had been a qualifying misrepresentation. He thought Ms S had answered Trinity Lane's question about the motorhome's current value to the best of her ability. And he didn't think Trinity Lane had explained the importance of an accurate answer. So he thought Trinity Lane should settle Ms S's claim without the proportionate deductions, adding interest to the difference between this amount and its interim settlement. And he thought it should also waive the policy excess because of the delays.

Trinity Lane doesn't agree with the Investigator and has asked for an ombudsman's decision. It said Ms S knew that the motorhome had increased in value, but she chose to insure it for a lower value. It said the policy provided for the declared value or market value, whichever is lower. It said Ms S was responsible for providing an accurate declared value. It offered to split the difference in settlements. But Ms S didn't accept this.

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 can understand that Ms S feels frustrated that she received only a proportionate settlement of her claim. She's explained that she was unable to replace her motorhome with a similar one for this amount.

Trinity Lane said Ms S's policy provided for the declared value or market value, whichever was lower. It said Ms S had undervalued her motorhome and if she had declared the true value then it would have charged a higher premium. And so it reduced her settlement in keeping with the proportion of premium she paid compared with what she would have paid if she had given an accurate value.

As the Investigator has already explained, our approach is that, generally, we don't think this is fair because the insurance cover is for the 'market value'. However, we consider how well

the insurer explained the importance of the value the consumer declared and why the consumer gave the answer they did.

Unless a business clearly explained the importance of declaring a value and its ramifications, we're unlikely to allow it to rely on this term. If the consumer gave a reasonable answer, again, we're unlikely to say the insurer can fairly rely on the term.

Trinity Lane also said the Ms S had misrepresented the motorhome's value which entitled it to settle the claim proportionately. In that case, the relevant law 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.

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. 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.

Trinity Lane thinks Ms S failed to take reasonable care not to make a misrepresentation when she stated in a call with her broker that the value of the motorhome was about the same as the previous year. The dialogue was:

Trinity Lane Agent: *"The value of the vehicle was £20,000 last year, that's going to be the same?"*

Ms S: *"Market value, I don't know. The price of motorhomes went up quite considerably I would have thought, but I don't know. Let's say about the same."*

So Ms S was evidently uncertain about the motorhome's market value. But the agent didn't explain why this was important for her policy. Ms S's previous year's policy had been taken through the same broker but with a different insurer that provided the market value regardless of the stated value. So I think the agent should have made clear the policy term which was unusual and significant.

Trinity Lane thought Ms S should have read the policy documents which explained the policy limit and then corrected the value with the broker. But I can see that the Statement of Fact sets out, amongst other things, the motorhome's "Estimated value".

Our approach is that an estimate is a statement of opinion. And a statement of opinion, which proves to be unfounded, can't be treated as a misrepresentation - unless it can be proved that the person who gave the statement didn't hold the opinion, or couldn't reasonably have held it. Ms S had confirmed that the motorhome's value remained about the same, though she was uncertain. And I can't say that this was unreasonable.

This is because the agent didn't ask for an estimate or a range. He just asked Ms S to confirm that the value remained the same as the previous year. Ms S was evidently aware that prices had increased during the pandemic. But this had been some years previously,

and I don't think Ms S could reasonably be expected to track fluctuations in the motorhome's value.

Trinity Lane thought the onus was on Ms S to research current prices and so provide an accurate value. But Ms S wouldn't have access to the motor trade guides used to value second-hand vehicles. So I think this wasn't fair or reasonable.

So I've considered the question Ms S was asked when she renewed the policy and the lack of information provided by Trinity Lane about the value. And I can't say that she failed to take reasonable care not to make a misrepresentation about the motorhome's value. And for this reason I'm not satisfied that it was fair and reasonable for Trinity Lane to rely on CIDRA to reduce Ms S's settlement.

To put things right for Ms S, I think Trinity Lane should now settle the claim for the motorhome's market value and her personal possessions without the proportionate reduction and pay Ms S the difference between this and the interim payment.

And, as Ms S has been without her money for some time, it should add interest to this amount. Trinity Lane has already agreed to waive the policy excess to compensate Ms S for the delays in the claim. I think that's fair and reasonable.

Putting things right

I require Trinity Lane Insurance Company Limited to do the following:

1. Settle Ms S's claim for the loss of her motorhome and personal possessions without the reduction it applied to the market value and pay her the difference between this and its interim payment.
2. Interest should be added to this amount at the rate of 8% simple per annum from the date of the interim payment to the date of final settlement†.
3. Waive the policy excess to compensate Ms S for the distress and inconvenience caused by its delays in her claim, as it's already agreed to do.

†If Trinity Lane considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms S how much it's taken off. It should also give Ms S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require Trinity Lane Insurance Company Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 25 October 2024.

Phillip Berechree
Ombudsman