

The complaint

Mr S complains that QIC Europe Limited (QIC) avoided his car insurance policy and refused to pay his claim following an accident.

What happened

Mr S took out car insurance with QIC through a broker. The car was purchased for Mr S by his friend through his company as Mr S had been unable to get the necessary credit. His friend's company bought the car under a hire purchase agreement and then arranged a separate lease agreement with Mr S. Mr S made monthly payments to his friend's company for the lease of the car.

Mr S was involved in an accident on 9 October 2019. He informed QIC and made a claim on his policy. The car was deemed to be a total loss and QIC asked for a copy of the V5C registration document. This showed that the registered keeper was Mr S's friend's company.

In his application for insurance, Mr S said that he was the registered keeper and owner of the car. QIC said that Mr S answered these questions incorrectly. They considered this to be a misrepresentation, which entitled them to avoid the policy and not consider Mr S's claim. They said that Mr S had no financial interest in the car, and it was not his to insure. They said the car should have been insured by the registered keeper and that the finance agreement did not allow the car to be leased to Mr S. They also referred to Mr S's policy which says that they will only insure him if the information he provides to them in his application is correct and complete.

Mr S brought his complaint to us as he did not think he had been treated fairly. He said that he had answered all the questions asked of him correctly as he thought the car was his. Our investigator looked into the matter but didn't think the complaint should be upheld. He said that there had been a qualifying misrepresentation and agreed it was deliberate or reckless and that QIC were entitled to avoid the policy and retain the premiums Mr S had paid. Mr S did not agree and asked for the matter to be considered by an ombudsman.

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.

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.

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.

QIC thinks Mr S failed to take reasonable care not to make a misrepresentation when he stated in his application that he was the owner of the car and the registered keeper. The test of reasonable care is that of the reasonable consumer, so I need to consider what a reasonable consumer would have done in the circumstances.

Mr S says as far as he was aware he had provided accurate information as he thought he was the keeper of the car as he was the main driver and the car was kept at his address. However, this doesn't make Mr S the registered keeper. The registered keeper is the person or company shown as such on the V5C document. I have seen the V5C document and this clearly shows that Mr S's friend company is the registered keeper. Mr S says he hadn't seen this document when he applied for his insurance, but this is an important legal document and I think it would have been reasonable for him to check this before applying for insurance.

Mr S said that he viewed the car as his as it was bought for him and he was making monthly repayments to his friend's company. However, the car was not owned by Mr S. The owner is the person who buys the car and it was purchased under a hire purchase agreement to which Mr S was not a party and so could not be described as the owner.

Notwithstanding a term of the hire purchase agreement that prevents the sub-lease of the car, Mr S then leased the car from his friend's company, and he was a party to this agreement. The lease agreement does not say it transfers ownership to Mr S. I note in the lease agreement, that Mr S is referred to as "*the Hirer*" and his friend's company as "*the Owner*". The car is said to be owned by his friend's company subject to the finance agreement, and although Mr S is required to insure it, he must also "*ensure that the Owner is named as a registered owner*". Whilst it's not entirely clear what a "*registered owner*" is, I think it's clear in the agreement that Mr S is not the owner. I therefore think it would have been reasonable for Mr S to have known that he was not the legal owner of the car – even if he wasn't aware that the car was actually owned by the finance company.

I therefore don't think that Mr S took reasonable care not to make a misrepresentation when he said he was the owner and the registered keeper of the car.

I now need to go on to consider whether Mr S's misrepresentation was a qualifying misrepresentation, namely whether it would have made a difference to what QIC would have done had it know the correct information.

I've looked at the underwriting criteria used by QIC. They say that they wouldn't have offered Mr S cover as the registered keeper/owner was Mr S's friend and this is not a category of ownership that they would cover. However, the registered keeper is not Mr S's friend but his company, and the owner is the finance company. As such, I think the car could have been covered under QIC's underwriting criteria but on different terms, i.e. for a higher premium.

QIC also say that as Mr S had no financial interest in the car, they would not have insured him. There is nothing to prevent someone insuring a car they don't own. However, as Mr S said he was the registered keeper and owner, QIC were not alerted to the fact that Mr S had no financial interest in the car and that other parties did. I'm therefore satisfied on the basis of the underwriting criteria and what QIC say, that Mr S's misrepresentation was a qualifying one.

I therefore need to consider whether the misrepresentation was deliberate/reckless or careless. A qualifying misrepresentation will be deliberate or reckless if the consumer knew or did not care whether the information provided was true or misleading. From what Mr S

has said, I don't think that he deliberately tried to mislead his insurer, but I do think that he was reckless. As stated above, I think that he should have known that the information he provided was incorrect. In particular, I think that the car leasing agreement between Mr S and his friend's company made it clear that Mr S was not the owner or the registered keeper of the car. I appreciate that English was not Mr S's first language but if there was anything that he was unsure of, he could have asked either his broker or insurer for clarification, or indeed his friend's company.

As I'm satisfied that Mr S's misrepresentation should be treated as deliberate/reckless, I've looked at the actions QIC can take in accordance with CIDRA. I'm satisfied QIC was entitled to avoid Mr S's policy in accordance with CIDRA. As this means that – in effect – his policy never existed, QIC does not have to deal with his claim following the accident or return his premium.

I know that this is not the outcome that Mr S was hoping for, but as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing QIC to rely on it to avoid Mr S's policy produces a fair and reasonable outcome in this complaint.

My final decision

For the reasons set out above, I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 December 2021.

Elizabeth Middleton
Ombudsman