

The complaint

Mrs P complains that Berkshire Hathaway International Insurance Ltd (Berkshire) declined her claim following an accident when driving, under her motor insurance policy.

What happened

Mrs P says she collided with a vehicle in front of her when she was driving home from work in February 2022. She contacted Berkshire to make a claim. It subsequently wrote back to her to decline the claim. It says she was using the car to commute, which isn't covered by her policy.

Mrs P says she called Berkshire to complain but wasn't given the chance to explain the circumstance behind why she was driving back from work. She says she had only been in her job for about four weeks, having previously been off work with health issues.

Mrs P says she arranged to get lifts with a colleague when she returned to work in January 2022. On the day of the accident her partner borrowed her car and drove her to work. He later dropped the car off at her place of work and gave her the keys. Mrs P doesn't think driving home on this occasion from work counts as commuting.

Mrs P says she paid Berkshire £30 to add commuting to her policy at its request. But she now has no car and can't afford to replace it. She paid the additional amount because she thought Berkshire would cover her claim. She says she has been caused a great deal of stress and anxiety as a result of her claim being declined.

Berkshire says Mrs P told it she was driving home from work during the claim call when it was asking validation questions. It says her policy covers her for social, domestic and pleasure use only. Not commuting.

Mrs P didn't think this outcome was fair and referred her complaint to our service. Our investigator upheld her complaint. He says it would've been fairer for Berkshire to consider this claim under The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). He says Berkshire has shown it would've added commuting to Mrs P's cover. He thought it should reconsider the claim. If it was valid in all other respects Berkshire should pay the claim on a proportional basis.

Berkshire disagreed. It says Mrs P had acted recklessly and so it had correctly declined the claim. It provided screenshots of the online questions it says Mrs P was asked and says the onus was on her to select the correct cover. It believes Mrs P acted recklessly when not selecting commuting, as she knew she would be using the car to commute. As an agreement couldn't be reached the complaint has been passed to me to decide.

I issued a provisional decision in October 2022 explaining that I was intending to uphold Mrs P's complaint. Here's what I said:

provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've thought about whether the CIDRA rules should apply in these circumstances. For it to apply Mrs P must have made a misrepresentation when she applied for her insurance policy with Berkshire. Insurers use the information a customer provides to assess risk and to decide whether to provide cover and at what price. So, if Mrs P intended using her car to commute, and told Berkshire she didn't, this would constitute a misrepresentation.

However, Berkshire hasn't argued that CIDRA applies here. Mrs P has also explained that she started work in January 2022. Prior to this she had been off-work due to her health condition. I've not been given a reason to doubt what Mrs P says about when she began working in her current position. So, I don't think it's been shown that she misrepresented this information when she applied for her policy in May 2021.

In light of this I don't think a misrepresentation was made by Mrs P under the CIDRA rules. That said Mrs P doesn't dispute that she was driving home from her place of work when the accident occurred. Berkshire says this was confirmed during a call it had with her. I've listened to the call recording it provided where the accident was discussed. Mrs P is asked if she was driving home from work, and she answers "yes".

The policy certificate Mrs P received says, under "Limitations as to Use", that she is insured to drive for "social, domestic and pleasure purposes excluding commuting". She was provided with a copy of this certificate along with other policy documents. This isn't in dispute. I think the information is clear that commuting is excluded.

Mrs P says she doesn't think driving home from work on the occasion of the accident constitutes commuting. I can't see that the policy terms provide a definition. The dictionary definition says this is "to travel regularly a distance between work and home". This is similar to the definition Mrs P has highlighted.

I've thought about Mrs P's comments that she normally gets a lift to work with a colleague. However, she was asked during the call I listened to if driving home from work is what she usually uses the car for. She answered yes to this question. This indicates she may have driven to and from work more often than just the day on which the accident occurred.

I don't think this shows Mrs P answered incorrectly when the policy was taken out. She confirms she wasn't working at this time, so she didn't need the car to commute. Based on this I'm satisfied a misrepresentation wasn't made under the CIDRA rules. However, the policy terms explain what Mrs P was required to do in these circumstances. The terms say:

"Changes to your insurance

It is important that you tell us immediately about any changes to the information that you have provided which is detailed in your statement of fact, schedule and certificate of motor insurance. Failure to notify us of any changes may result in your policy not being valid and we may not pay your claim or only pay part of your claim. We may also cancel or void your policy.

For example, you must tell us about:

- You change what you or anyone covered by this policy use your car for (for example, you start using it for business purposes or delivery purposes even if you have arranged separate insurance for this.)"

I think the terms are clear that if Mrs P wanted to start using her car for commuting, she needed to tell Berkshire about this. This would constitute a significant change to the risk involved in insuring Mrs P, so it's reasonable that it would want to know about it.

I can see that Berkshire provided Mrs P with a new policy schedule following her accident. This includes commuting as one of the permissible uses of her car. I understand from Mrs P that she was asked to pay an additional £30 as a result of this change. So, it's clear Berkshire was prepared to include commuting in the cover it offered to Mrs P.

I've said that a misrepresentation wasn't made by Mrs P under the CIDRA rules. But in these circumstances, I think referring to the outcomes set out by CIDRA is reasonable when deciding what should happen here. With this in mind I think it's reasonable that Berkshire reconsiders Mrs P's claim. When calculating redress, it should do so on a proportional basis, considering the premium Mrs P would've paid to include commuting – against what she actually paid.

I've also thought about the impact all of this had on Mrs P. She describes feeling very distressed that her claim wasn't covered. The thought of being liable for the damage to the third-party vehicle caused her a great deal of anxiety. She was also unable to repair or replace her own car and so had no vehicle as a result of the declined claim. I think it's fair that Berkshire pays Mrs P £200 compensation for the worry and inconvenience this caused her.

I said I was intending to uphold Mrs P's complaint and Berkshire should:

- reconsider Mrs P's claim on a proportional basis, without relying on the commuting exclusion; and
- pay £200 compensation for the distress and inconvenience it caused Mrs P.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Berkshire didn't respond with any further information or comments.

Mrs P didn't respond with any further comments or information either.

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.

As neither party has made any further submissions or provided further evidence for me to consider, I see no reason to change my provisional findings.

So, my final decision is the same as my provisional decision and for the same reasons.

My final decision

My final decision is that I uphold Mrs P's complaint. Berkshire Hathaway International Insurance Ltd should:

- reconsider Mrs P's claim on a proportional basis, without relying on the commuting exclusion; and
- pay £200 compensation for the distress and inconvenience it caused Mrs P.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 14 December 2022.

Mike Waldron
Ombudsman