

The complaint

Mr H complains that KGM Underwriting Services Limited (KGM) declined a claim for the total loss of his car due to a fire, under his motor insurance policy.

What happened

Mr H bought a car in April 2022 having seen it advertised for sale on the internet. Before collecting the car, he arranged for it be insured with KGM. When driving the car back it suffered a serious fault and caught fire. Mr H was able to pull the car onto the hard shoulder and the emergency services attended to put out the fire.

The car was a total loss due to the fire. But Mr H says KGM declined his claim as it said he had no garage in which to store his vehicle. This was a requirement of his policy. Mr H says he has a secure lockable space at the rear of his property where the car was intended to be kept.

In its complaint response KGM says that Mr H doesn't have a garage. It also says that he has another car insured with it, that Mr H also confirmed would be kept in a garage. KGM says there is no room for two cars in the area Mr H identified as his garage.

Mr H thinks KGM is relying on a technicality to decline his claim. He thought its decision was unfair and so he referred his complaint to our service. Our investigator upheld Mr H's complaint. She thought the parking space was fairly described as a garage and highlights that it has CCTV, a security light, an electric shutter, and a padlocked gate. She didn't think this could reasonably be described as a driveway, as KGM had indicated.

Our investigator thought KGM should reconsider Mr H's claim and consider the fee raised by the Highways Agency for removing and disposing of his car.

KGM disagreed and asked for an ombudsman to consider the complaint.

It has been passed to me to decide.

I issued a provisional decision in December 2022 explaining that I was intending to partially uphold Mr H'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.

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.

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.

KGM says Mr H failed to take reasonable care not to make a misrepresentation when he incorrectly said his car would be kept in a locked garage. It has supplied information from its underwriters that confirms it wouldn't have offered cover at all if it knew the car wouldn't be kept in a locked garage. The business says it thinks this was a careless misrepresentation on Mr H's behalf. And under CIDRA it is able to cancel the policy.

I've looked at the photos that show the space Mr H refers to as a garage. The sides of the space are made up of a boundary wall on one side, which is around five feet high, and the rear wall of Mr H's house on the other side. The neighbour's property forms the back wall of the space, and there is a shutter fitted across the entrance that can be lowered and locked. There is no roof to the space. And I note KGM's comments that it would be possible to access the area when the shutter is down by climbing over the boundary wall.

KGM says Mr H's broker provided a different version of its standard policy document. This didn't include its usual garaging definition. But it says the policy schedule and Insurance Product Information Document (IPID) refer to the garaging endorsement and that a garage is a locked and secured building.

I've read the policy schedule. This says, "Garaging Endorsement" and, "The insured vehicle must be kept in a locked and secured building overnight".

I've thought about whether it's reasonable for Mr H to have thought of this space/structure as a garage. But I don't think it is. I've looked at the online definition of a garage. This says it is a building for housing a motor vehicle. I think a reasonable person would expect a building to have a roof.

From the photos supplied, Mr H has an outdoor space at the rear of his property, with no roof. Access is possible over the boundary wall and it's large enough to park one vehicle. I don't think this space can be considered a garage. And I don't think it reasonably satisfies the garaging endorsement for it being kept in a locked and secured building.

I've listened to the call recording when Mr H applied for his policy with KGM. Around four and a half minutes into the call he's asked where the vehicle is going to be kept or stored when not in use. Mr H responds that it will be, "kept in the garage, locked". The statement of fact document he was sent confirms the car will be garaged at Mr H's home address when not in use.

I accept Mr H has some security measures in place for his parking space, including CCTV, a light, and a lockable shutter. But I don't think this can reasonably be described as a garage, which in the policy schedule is described as a locked and secured building. I think KGM makes a fair point that the parking space doesn't prevent access to the vehicle or to the internal workings of the shutter. It says it doesn't prevent the opportunity for theft or accidental damage in the way a locked garage would.

I've also thought about KGM's comments that Mr H had two policies insuring two different vehicles. Both contain the same requirement for the vehicles to be garaged. I think its argument is persuasive that Mr H doesn't have a garage. But, even if the space he regards

as a garage met the policy requirements, it doesn't have space for two cars. I think it's reasonable to expect Mr H to have known this when he applied for his policy and advised his car would be kept in a locked garage.

Based on this I think Mr H did make a qualifying misrepresentation. I think it's reasonable that KGM considered this to be careless. It says it has cancelled and processed a pro-rata refund for both of Mr H's policies. However, in these circumstances CIDRA says:

"If the insurer would not have entered into the consumer insurance contract on any terms, the insurer may avoid the contract and refuse all claims but must return the premiums paid."

KGM has confirmed it wouldn't have offered insurance. This means the premium should be refunded in full. The business says it has waived its cancellation fee, which I think is reasonable, but it should provide a full premium refund in line with CIDRA.

In summary I don't think KGM treated Mr H unfairly when relying on its policy terms and declining his claim and cancelling his policy in line with the CIDRA rules. But I do think it should refund the full premium paid, in line with the rules.

I said I was intending to uphold this complaint in part and KGM should:

- refund Mr H's policy premiums in full in line with CIDRA.

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

KGM responded to say it had now made adjustments in order to provide a full refund of premiums.

Mr H responded to say that the definition of a garage is subjective. He says some people consider his parking area to be a garage and others don't.

Mr H says that in my provisional decision I referred to listening to his call with KGM. But he says I fail to mention that no option was provided by KGM during the call. He says no definition was read out to him.

In his response Mr H says our investigator found that KGM had amended its own policy after his claim was dismissed. He asks why this was the case. Mr H says KGM failed to provide him with relevant information during the initial phone call, which he says is contrary to General Insurance Sales Regulations.

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 note KGM's comments about the premium adjustment. Mr H hasn't accepted my decision so there is no binding requirement for it to act on it as yet. It will of course need to ensure a premium refund is provided should Mr H accept my findings. However, KGM hasn't submitted further information or comments for me to consider as part of my decision here.

I note Mr H's view that the definition of a garage is subjective. In my provisional decision I referred to the information contained in his policy schedule regarding what the garaging endorsement meant. This says that the insured vehicle must be kept in a locked and secured building overnight.

The area where Mr H says his car would be parked is partially made up of a boundary wall that borders the outdoor space to the rear of his property. The other walls are made up of Mr H's house and his neighbour's property. There is a lockable shutter fitted across the entrance.

I pointed out in my provisional decision that the boundary wall is approximately five feet tall. I said KGM's view was fair that this would still allow access by a person climbing or jumping over the wall. The person would then have access to the car and the mechanism for the shutter.

I accept Mr H has a different view of what constitutes a garage. But the dictionary definition I referred to online says a garage is a building for housing a motor vehicle. I said in my provisional decision that a building would reasonably be expected to have a roof. Mr H's parking area doesn't have a roof. The entrance shutter can be locked. But this doesn't prevent someone gaining access.

I've thought about Mr H's comments that he wasn't given a definition of what a garage was when he took the policy out. I don't agree that a reasonable person would consider the parking area, Mr H has referred to, as a garage. But he was advised to read his policy schedule. This referred to the insured vehicle being kept in a locked and secured building. I think it's reasonable that Mr H would contact KGM to clarify whether his parking space met with this definition having read his policy schedule.

Another point KGM raised is that the parking area Mr H refers to as a garage only has space for one car. Mr H had two cars insured with KGM and both have a garaging endorsement. It says that whether this is a garage or not becomes a moot point, given there is no space for both cars. I think its point is persuasive and indicates the information Mr H gave that the car would be garaged overnight wasn't accurate.

I note Mr H's comment that our investigator found KGM had gone back to amend its policy after his claim was dismissed.

I understand this point is about when KGM was sent images of the space Mr H referred to as his garage. Its underwriters didn't think this was a garage. The reference to amending the policy, is that a check was made to see if cover was available when changing the policy details. This was from the car being kept in a garage to being kept on a driveway. KGM's underwriting criteria didn't allow cover unless the car was garaged overnight. The policy wasn't being amended but rather checked to see if cover was possible under different terms. This supports KGM's decision to avoid the policy and doesn't warrant an alteration to my decision.

Having considered all of this I'm not persuaded that the further comments warrant a change to my provisional decision. This will now become my final decision.

My final decision

My final decision is that I uphold this complaint in part. KGM Underwriting Services Limited should:

- refund Mr H's policy premiums in full in line with CIDRA.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 February 2023.

Mike Waldron
Ombudsman