

The complaint

Mr G complains that QIC Europe Ltd cancelled his motor insurance policy and refused to pay a claim, relating to an incident of vandalism. He also complains that QIC has retained premiums in respect of an earlier accident. Mr G would like the policy reinstated and his claim paid.

QIC is the underwriter of the policy, that is, the insurer. The actions of QIC's agents are relevant to the history of this complaint. As QIC has accepted it's accountable for those actions, in my decision, any reference to QIC includes the actions of its agents, although for clarity, I will at times refer to particular agents separately.

What happened

In March 2018, Mr G sought insurance for a car he was buying. Through a broker, A, he took out cover with a different underwriter. The policy was renewed each year, the last renewal being in March 2021. QIC took over the underwriting of Mr G's cover in January 2020. So the renewals of March 2020 and March 2021 were underwritten by QIC.

Throughout the time Mr G had insurance for his car, the same agent, K, administered the policies on behalf of the underwriters. At the time his original policy was taken out, it was on the basis that Mr G's car would be kept overnight on a driveway at his home address.

In November 2020, Mr G was involved in an accident. This resulted in a third-party claim against Mr G, which QIC subsequently settled. I understand there was also some damage to Mr G's car and that repairs were arranged to coincide with when Mr G was travelling abroad for an extended period from June 2021. Mr G has said that he left his car at his home address to be collected by the garage for work to be done.

QIC subsequently received an estimate for repairs which prompted the claims handlers to arrange for an inspection of the vehicle to take place. An engineer's report indicated the majority of the damage appeared to be as a result of vandalism. The claims handlers sought clarification from Mr G who confirmed that, between him leaving the car and the garage coming to collect it, it had been vandalised.

QIC looked into the circumstances of Mr G's claims and policy further. It established there was no driveway at Mr G's home address. QIC, through K, said Mr G had misrepresented information relevant to the contract of insurance, that is, regarding where his car would be kept overnight. It said that had the true parking arrangements been declared, it would not have entered into the contract. K provided underwriting guidance to show that in 2018 and 2019 Mr G's car exceeded the maximum value acceptable to the underwriter for a car parked on the road. QIC cancelled Mr G's policy and refused to indemnify him for any claim.

Mr G complained, but K, on behalf of QIC maintained its position, saying it had been induced into entering into a contract of insurance when it would not otherwise have done so. It confirmed that cover had been cancelled and that the third-party claim costs of £2200.06

would be deducted from the total refund of all premiums of £2731.08. It refunded the remaining £531.02 to Mr G.

Mr G brought his complaint to us. Our investigator didn't think it should be upheld. Mr G maintained there was no qualifying misrepresentation and thought QIC should pay his claim. As Mr G remained unhappy his complaint came to me for a decision.

In February and March 2023, I issued two provisional decisions, both upholding the complaint. In the second provisional decision, following further submissions from QIC, I revised the basis of my decision and proposed redress. The gist of that provisional decision was as follows:

- The history of this complaint involves four separate but consecutive consumer contracts of insurance, provided by two different underwriters. The same agent, K, has been involved throughout.
- Based on the evidence I'd seen I was not persuaded that Mr G had made a qualifying misrepresentation when taking out insurance with QIC in March 2020 or March 2021. I shall refer further to that evidence later on.
- Both parties agree there's no driveway at Mr G's home address. I explained why I wasn't persuaded by Mr G's argument that his car was actually kept more securely at a garage, whilst work was being done between March 2018 and July 2019. I relied on evidence of a call around the time of inception, when Mr G seeks confirmation that he's now ok to use the car. And also the MOT history of the car, which records that between March 2018 and March 2019 it did over 7500 miles.
- I thought it was reasonable for QIC to consider this history and the subsequent breakdown in trust as a valid reason for cancellation. So I didn't think QIC treated Mr G unfairly when it cancelled his 2021 policy.
- But as the policy was cancelled – from 9 August 2021 – and I'd already concluded there was no misrepresentation in that policy year, I could see no basis for refusing to consider the vandalism claim. The policy was live at the time and QIC was on risk.
- In respect of the 2020 policy, it ran its course, so cannot be cancelled retrospectively. QIC should therefore consider any claim for damage to Mr G's car arising from the accident in November 2020. It should also remove any negative data reported in respect of the 2020 policy.
- I considered the policy refund terms after cancellation. At best Mr G would be entitled to a refund for the unexpired portion of his annual premium. As the refund given was £531.02 and the policy was live for less than five months, I was satisfied this refund exceeded what Mr G would likely have received under a proportionate approach. So I didn't think QIC had treated him unfairly in this respect.
- I considered whether a payment for distress and inconvenience was appropriate. My substantive finding was that QIC was entitled to cancel Mr G's 2021 policy but should have considered his claim. I accepted this had been a stressful situation for Mr G. But taking into account all the circumstances, I didn't think it was appropriate to make an award for distress and inconvenience.

To put things right I proposed redress as follows:

- remove any negative information it has reported to internal and external agencies in relation to Mr G's 2020 policy which ran its course

- consider further the vandalism claim and any claim for repairs outstanding from the accident in November 2020. QIC would be entitled to deduct the £531.02 already refunded from any settlement figure in respect of the vandalism claim.

Mr G, through his representative, acknowledged receipt of my decisions and, in response to the second, said that he did not have any further comments to make.

QIC responded fully to both provisional decisions. The gist of its arguments were as follows:

- it's entitled to take into account the history of Mr G's insurance of the vehicle and his dealings with its agents K since inception
- Mr G has failed to provide information that is true to the best of his knowledge or belief, in line with the policy terms and conditions
- the true nature of the car's overnight location would have made the risk unacceptable to QIC and cover would not have been offered.
- there has been a misrepresentation of material information dating back to inception of the policy with multiple opportunities to correct the misrepresentation.
- the misrepresentation was deliberate or reckless, so it was entitled to avoid the policy and retain the full premium.
- However, avoiding the policy would incur court costs which it would be entitled to recover from Mr G. Mr G would also be liable for third-party costs arising from the accident in November 2020. And there would be no entitlement to claim for the vandalism damage.
- It felt it was fairer to cancel the policy, although it accepted that strictly speaking this was not the correct approach.
- It considered Mr G had benefited from the policy being cancelled rather than avoided in that he received some refund, was not faced with court proceedings or additional costs, and benefitted from the agent's refund calculation which took into account policy years under the previous underwriter.
- Regardless, as the cancellation was back to inception for their policies, Mr G would still be liable for the third-party damage arising from his accident and to his own car resulting from the subsequent vandalism.

Having heard from both parties, I now issue my 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.

Having done so, I'm upholding this complaint. I'll explain my reasoning.

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.

QIC was underwriter for the annual policies running from March 2020 and March 2021. It says there has been a misrepresentation of material information that dates back to the inception of its policies. That misrepresentation relates to where the vehicle is normally kept and its overnight location. QIC considers the misrepresentation to be deliberate or reckless. So I need to think about whether that is so and if it is, whether QIC acted in line with the remedies available to it under CIDRA?

QIC has been clear in its cancellation letter to Mr G and subsequent correspondence to the Financial Ombudsman Service that it was entitled to avoid the policies but chose to cancel instead. And that the reason for cancellation was that Mr G presented the risk to QIC on the basis the vehicle was parked on his driveway, when no driveway existed. Had it known this, it would not have accepted the risk.

It is not in dispute that there's no driveway at Mr G's property. I accept that historically, Mr G has not been straightforward in this regard. In relation to the QIC policies, the history of Mr G's enquiry about garaging his car and the application of a garaging endorsement dates from July 2019.

As part of its evidence QIC provided a call recording it believed showed Mr G didn't go ahead with the garaging endorsement. QIC related this call to the July 2019 contact with broker A regarding changes to the policy. I've listened to the call. I accept Mr G is enquiring about keeping the car at a secure compound. And he decides not to change the location when he's told the additional cost. But I think this call is from a different time, around the period Mr G initially took out cover in 2018. I say this because Mr G is also calling to confirm he's had a private plate fitted, something he did in 2018. And at approximately 7'20" into the call, Mr G is asked whether the car has a tracker and replies, 'I'm not too sure, I've only just bought it.' So I don't think this call supports QIC's position.

QIC also provided a record of contact between Mr G and broker A from July 2019. Mr G contacted the broker to enquire about some possible changes to his policy – a reduction in annual mileage and garaging. The address for the proposed garaging was provided. The enquiry record states:

As I may be working away from home car to be kept in secured gate access area with locked private garage.

On 18 July at 11:00 the broker replies to Mr G saying, amongst other things:

In regards to changing where your vehicle is kept, as your vehicle will still be kept on your driveway whilst at home, we have left the parking arrangement as park on the drive.

The same day at 17:09 Mr G responds:

I work away from home for six weeks at a time and I have hired a privately own garage in a secure compound with an eight foot fence as entry and a secure private garage to keep the [car] safe. I feel it will be more secure there. It will no longer be kept on driveway.

The broker subsequently submitted the electronic instruction to QIC with this amendment and Mr G was issued with amended policy documents stating the garage address as the

location where the car was normally kept. Along with this mid-term adjustment, the statements of fact for the annual policies starting March 2020 and March 2021 also show the garage as the normal location. Unfortunately, the renewal call for March 2021 wasn't available, having been corrupted. But I've listened to the call from March 2020 and there's no specific mention regarding where the car would normally be kept. Mr G is asked if he's happy with the terms and conditions, and he confirms that he's 'got all that'. He's also asked to check his documents and confirms that he will.

QIC has suggested that inclusion of the garaging endorsement was an administrative error, particularly as it appears there was no premium variation as a consequence of the endorsement. But I think the email chain shows Mr G wanted to garage his car. And three sets of policy documents were subsequently issued, all with the garaging endorsement applied. So I'm not persuaded that could reasonably be viewed as an administrative error.

QIC also submitted some Google street views, showing Mr G's car parked on the road outside his home. Unsurprisingly, given their purpose, the pictures were taken during daylight. I don't think the garaging endorsement means Mr G could never park his car at his home address. Rather, that it would normally be kept at the garage address.

So overall, I'm not persuaded that Mr G failed to take reasonable care and misrepresented the overnight location of his car when taking out insurance with QIC in March 2020 and March 2021.

So as I'm not satisfied there's been a misrepresentation to QIC, I don't agree that QIC was entitled to avoid the policies. However, as I've indicated, the evidence also shows Mr G wasn't truthful when he originally took out insurance in 2018, or when he renewed in March 2019. For these policies the overnight location was declared as 'parked on driveway' – something that became known to QIC through K, the agent that had administered all of Mr G's cover for the vehicle.

I think QIC's awareness of Mr G's representations in 2018 and 2019 is a valid reason for cancellation. I can understand why QIC would be concerned about this history and no longer wish to continue its relationship with Mr G. So I don't think QIC treated Mr G unfairly when it cancelled his policy.

But I don't think that entitles QIC to refuse claims when CIDRA does not apply because there's been no misrepresentation for the relevant policy years, beginning March 2020 and March 2021. So I think QIC needs to do something more in respect of its actions regarding those policy years.

The policy was cancelled from 9 August 2021. So QIC must consider the vandalism claim arising from when the policy was live. Additionally, the 2020 policy ran its course, so cannot be cancelled retrospectively. QIC was on risk throughout this policy year, so must also consider any claim for damage to Mr G's car arising from the accident in November 2020. And it should remove any negative data reported in respect of that policy. But as the policy ran its course, Mr G is not entitled to any premium refund.

QIC cancelled Mr G's 2021 policy and refunded him £531.02. As I explained in my second provisional decision, I think QIC acted fairly regarding the refund. However, QIC would be entitled to deduct the refunded premiums from any settlement subsequently made for the vandalism claim.

Finally, I remain of the view that an award for distress and inconvenience isn't warranted in this case.

Putting things right

To put things right, QIC must:

- remove any negative information it has reported to internal and external agencies in relation to Mr G's 2020 policy which ran its course
- consider further the vandalism claim from 2021 and any claim for repairs outstanding from the accident in 2020. QIC would be entitled to deduct the £531.02 already refunded from any subsequent settlement figure in respect of the vandalism claim.

My final decision

My final decision is that I uphold this complaint. I direct QIC Europe Ltd to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 April 2023.

Jo Chilvers
Ombudsman