

## The complaint

Miss M complains that Haven Insurance Company Limited cancelled her motor insurance policy and refused to pay her claim.

Other companies have been involved in this complaint, but Haven is the underwriter of this policy i.e. the insurer. It is therefore responsible for it, and any references to Haven include the actions of the companies acting on its behalf.

## What happened

Miss M took out a car insurance policy with Haven and her partner Mr W, was a named driver on the policy. Miss M says they traded in her car and bought a new one and she amended her policy online to cover the new car. When the car was stolen, she tried to make a claim.

Haven said Miss M incorrectly answered the question it asked about who owned the car when she amended her policy. It said Mr W was the owner and registered keeper of the new car and not Miss M. And it considered this to be a deliberate qualifying misrepresentation, which entitled it to cancel her policy, decline her claim, and retain the premium she'd already paid.

Miss M brought her complaint to us and our investigator thought it should be upheld. He agreed there had been a qualifying misrepresentation but didn't think this was deliberate or reckless. He believed it was careless. He thought Haven was entitled to decline her claim but that it should return the premium she'd paid. Our investigator agreed Miss M didn't have an insurable interest as the finance for the new car was in Mr W's name. So, he said Haven should pay the trade in value of Miss M's previous car as this was her financial interest.

Miss M still doesn't think Haven's decision was fair. She says they were victims of a theft and regardless of who the registered keeper of the car was, they were both on the policy.

Haven also doesn't agree with our investigator and has asked for an ombudsman's decision. It says a careless misrepresentation would have been if Miss M selected spouse or common law partner. It says Miss M said she was the registered keeper and knew this was not the case. It also doesn't think paying the trade in value of the previous car is a valid remedy under CIDRA.

I issued my provisional decision on 11 May 2023 in which I said:

*"Haven has given several policy terms as reasons for cancelling Miss M's policy. Ultimately it says Miss M gave untrue information when taking out the policy and therefore it is entitled to cancel the policy and decline any claims. So, I've considered whether its treated Miss M fairly and reasonably in doing so.*

*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 must 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.*

*Haven provided an example of the form Miss M would have seen when amending her policy online. The form asks for the "registered/owner keeper" and provides a drop-down list of options to pick from. I think it was clear what information it was asking for, and I'm satisfied Haven has shown Miss M stated she was the owner or registered keeper of the car.*

*Miss M said she traded in her previous car to help towards paying for the new one. However, the loan was taken out by Mr W and covers more than 90% of the cost of the new car. I think it's fair to say Mr W owned the car. Even if ownership could be disputed, the vehicle documentation indicates Mr W was the registered keeper. Miss M said it was put in Mr W's name because the loan was in his name, so I'm satisfied she was aware she wasn't the registered keeper. As such, I find Miss M failed to take reasonable care not to misrepresent information.*

*Haven has provided evidence of its underwriting criteria which shows that if Miss M had not misrepresented this information, it would not have offered her cover. This means I'm satisfied the misrepresentation was a qualifying one.*

*Haven thinks Miss M's misrepresentation was deliberate or reckless. It says Miss M knew she was not the registered keeper of the car. It says a careless misrepresentation would have been if she had selected spouse or common law partner.*

*I'm not persuaded the misrepresentation was deliberate or reckless. I think it was careless. I say this because, Miss M says she doesn't recall answering questions about who owned the car, she thinks it was down to human error. And I've not seen enough to show she deliberately gave false information when completing the form. Miss M was the registered keeper and owner of the previous car insured under the policy and considering Miss M has told us she uses the car more than Mr W did, I can understand how the error might have happened.*

*I accept she could have stated spouse or common law partner, but I find that answering in this way would be more indicative of a deliberate act. Ultimately, I'm not persuaded Haven has met the high bar to conclusively demonstrate this was a deliberate or reckless misrepresentation.*

*I've thought about the remedies available to Haven under CIDRA and I'm satisfied under CIDRA it would have been entitled to avoid the contract. However, Haven chose to cancel Miss M's policy with effect from 7 June 2022 and I'm satisfied it's done so in line with the terms and conditions of the policy, and I don't think doing so was unreasonable. It said it would not have accepted the risk if it was given correct information, so it doesn't think it needs to pay the claim. But I find that by cancelling the policy in this way, it's in effect treated it as active and valid up until cancellation. It therefore must consider any claims made from inception until cancellation under the remaining terms and conditions of the policy.*

## **Declined claim**

*Haven has given several terms and conditions that support its decision to decline the claim, but I think the most relevant of them states:*

*“If You do not comply with the General Conditions, We may:*

- 1 Cancel Your policy*
- 2 Refuse to deal with Your claim”*

*It also states:*

*“We will only provide insurance if:*

- 1 Any person insured by this insurance has complied with all the Conditions in this contract and in the Schedule.*
- 4 The information given in the proposal form or statement of fact and declaration and at each renewal is, as far as You know, correct and complete.*
- 6 You notify Your Broker as soon as possible of any changes to the information provided in the proposal form or statement of fact and declaration and at each Renewal ...”*

*It’s not disputed that Miss M gave incorrect information when amending her policy. So, under the strict application of the terms Haven is entitled to decline the claim. However, Haven is also required to take into consideration the law and industry guidelines such as the Insurance: Conduct of Business Sourcebook (ICOBS). And ICOBS says a business shouldn’t unreasonably reject a claim. ICOBS 8.1.2B also says:*

*“...a rejection of a consumer policy holder’s claim for breach of a condition or warranty (that is not subject to and within section 10 or 11 of the Insurance Act 2015) is unreasonable unless the circumstances of the claim are connected to the breach.”*

*So, I don’t think an insurer should decline a claim for a breach of policy term if it isn’t material to the loss. Haven therefore needs to show that in Miss M’s case, who she said owned the car and was its registered keeper had a bearing on the loss claimed for. I don’t think it has shown this. And I’m not persuaded Miss M giving incorrect information about the owner of the car had any connection to the car being stolen. Nor do I think who owned it or who it was registered under had any bearing on the loss.*

*Its notes indicate the car was stolen while Miss M was at Mr W’s home. But I can see she explained to Haven that she would stay at his home from time to time. I understand it said it wasn’t aware of Mr W’s address, but I’m satisfied this wasn’t where Miss M lived, so I don’t think it’s something she needed to declare to Haven. And I don’t think the fact it was stolen from outside Mr W’s home is reason enough to decline the claim.*

*Haven thinks only Mr W had an insurable interest in the car. While the claim was initiated by Miss M, as Mr W is a named driver under the policy he would also have been entitled to make a claim for the loss, which Haven would have needed to investigate and potentially pay in line with the other terms and conditions of the policy.*

*Section B of the terms and conditions state: “If Your Car is stolen and not recovered, subject to Clause 11 below We will provide the owner of Your Car with settlement of its Market Value...”*

*If a settlement payment is due, I’m satisfied the terms do not require the payment to be made to the policyholder but to the owner of the car. As such, I find it’s unreasonable to decline the claim on the basis that Miss M wasn’t the owner of the car.*

### **Putting things right**

*I intend to tell Haven to pay Miss M's claim for the stolen car, and any payment in relation to the loss of the car should be made to Mr W. It should pay 8% simple interest per year on any settlement payment it makes directly to Miss M or Mr W.*

*I've also considered whether Haven should pay Miss M any compensation. Miss M says it's been difficult to get around with her children without a car. And I think having her claim declined would have caused additional worry and upset in the already difficult situation of having a car stolen. So, for this reason, I think £150 compensation is fair..."*

### **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.

Miss M accepted my provisional decision and Haven didn't provide a response. As neither party has provided any further information for me to consider, I see no reason to depart from what I said provisionally.

### **My final decision**

For the reasons set out above, I have decided to uphold this complaint and I require Haven Insurance Company Limited to:

- Pay Miss M's claim, in line with the remaining terms and conditions of the policy. Any payments in relation to the loss of the car should be made to Mr W.
- It should also pay 8% simple interest per annum on any settlement payment it makes to Miss M or Mr W, from the date of the claim until payment is made.
- Pay £150 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M and Mr W to accept or reject my decision before 23 June 2023.

Oluwatobi Balogun  
**Ombudsman**