

The complaint

Miss G complains that Haven Insurance Company Limited avoided her car insurance policy and refused to pay her claim.

What happened

Miss G took out a car insurance policy with Haven through a price comparison site. When her car was stolen, she made a claim on her policy.

Haven said the car was financed by a third party (I'll refer to as Ms B) and therefore the finance company and Ms B were the owners of the car, not Miss G. It said Miss G incorrectly answered the questions it asked about who the registered keeper and owner of the car were. It considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to cancel the policy, refute any claims and it didn't think it needed to return the premiums she had paid.

Miss G said Ms B is her sister-in-law and the car was given to her as a gift, so she had not thought to ask how the car was paid for. Miss G says as it was a gift, she was the owner of the car and had answered the questions asked correctly. She thinks Ms B is responsible for paying the finance company and Haven should pay the full settlement directly to her. However, Haven didn't change its decision to decline the claim.

Miss G brought her complaint to us and our investigator thought it should not be upheld. They said Miss G wasn't the vehicle's owner or the finance holder, so she hadn't suffered a loss. Our investigator also said they didn't think Miss G had an insurable interest, therefore she couldn't make a claim on her policy.

Miss G doesn't agree with the investigator and says she didn't know the statements she made at inception were untrue. Miss G maintains that she was the registered keeper of the car as the V5 was in her name, and that she has suffered a loss as the sole user of the car she no longer has use of. As an agreement couldn't be reached, the complaint has been passed to me to decide.

I issued my provisional decision on 16 June 2023 in which I said:

"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've come to a different outcome to our investigator. I intend to uphold this complaint and I'll explain why.

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.

Haven thinks Miss G failed to take reasonable care not to make a misrepresentation when she said she was the registered keeper and owner of the car.

The comparison site through which Miss G applied for the policy asks:

"Who is the registered keeper?"

In its system notes Haven indicates that the V5 document for the car was updated on 31 May 2022 and suggests Miss G may have updated the records after making the claim to make herself the registered keeper of the car, however it's not provided any evidence to support this. As the only V5 information I've seen shows the car as registered to Miss G, I'm satisfied she was its registered keeper and answered that specific question correctly.

I've then looked at what was asked regarding the legal owner of the car. The question on the comparison site says, "who is the legal owner?" The guidance information provided to help answer the question says, "if ownership was transferred to you, as a gift, you will also be the legal owner."

The finance agreement I've been provided for the car is in Ms B's name. Our investigator phoned Ms B and she confirmed that she gave Miss G the car and I've not seen any evidence to suggest that wasn't the case. As such, I'm satisfied the car was given to Miss G as a gift.

Miss G says she had not been told it was under a finance agreement, and she hadn't thought to ask how the car was paid for. Considering they both agree it was given as a gift, I don't think what she said is unreasonable. Given that the additional information on the comparison site also indicated that if ownership was transferred by way of a gift, the recipient becomes the legal owner, I don't think it's unreasonable for Miss G to have assumed she was the legal owner of the car, especially as the only V5 document I've seen shows the registration had been transferred to her. I think it's likely any reasonable person would have made similar assumptions as Miss G did in the circumstances.

Ultimately, I'm not persuaded Haven has shown Miss G failed to take reasonable care not to make a misrepresentation when answering the questions she was asked when taking out the cover. So, I don't find its decision to avoid her insurance policy on this basis was fair or reasonable.

The terms and conditions say Haven will first discharge any sum owing on the hire purchase agreement and then settle the difference, if any, with the policyholder. Haven says, as Ms B pays the finance, she and the finance company are the owners of the car. It doesn't think Miss G has an insurable interest here, but I don't agree. Miss G also thinks she should be considered the innocent purchaser, but I don't think that applies here as she did not buy the car from Ms B.

Nevertheless, Ms B has confirmed that any settlement payment due, should be made to Miss G. I've also carefully read the terms of the finance agreement and it indicates that ownership can't be transferred until the agreement is fulfilled. While I accept Ms B acted outside the terms of the finance agreement by giving the car away, I don't think Miss G can be held responsible for this.

Although the finance company ultimately owns the car until the agreement is fulfilled and all the payments are made, the value of the car is likely to be more than the amount outstanding on the finance. Even though Ms B pays the finance, as I'm satisfied the car was a gift, I think Miss G would have owned the car once the agreement was settled, so I think she would have been entitled to any value remaining once the agreement finished. As such, I find Miss G did have an insurable interest here and has suffered a loss.

In light of all this, I intend to tell Haven to consider the claim in line with the remaining terms and conditions of the policy."

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 both parties accepted what I said provisionally, I see no reason to depart from my provisional decision.

My final decision

For the reasons I've set out above, I've decided to uphold Miss G's complaint and I require Haven Insurance Company Limited to consider the claim in line with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 31 July 2023.

Oluwatobi Balogun
Ombudsman