

The complaint

Miss Z complains about Haven Insurance Company Limited's actions after it had cancelled her car insurance policy and declined her claim. Haven has since confirmed it avoided the policy.

What happened

Miss Z took out a car insurance policy in December 2022. In March 2023, the car was stolen, and she made a claim with Haven.

In April 2023, Haven wrote to Miss Z to say her policy had been cancelled. Haven later explained to her this was because it felt Miss Z had made a misrepresentation when she took out the policy.

The car was then found by the Police and Miss Z informed Haven of this, along with details of where it was stored. After initially saying it would recover the car, Haven later told Miss Z it wouldn't. Haven said this was because Miss Z told it she was the owner of the car when the policy was taken out, and the actual owner was her ex-partner (Mr K). Haven said if it had known Mr K was the owner when Miss Z took out the policy, it wouldn't have provided cover. The car was destroyed by the storage yard shortly after this.

Miss Z complained that Haven told her it would recover the car and later changed its mind. She said this resulted in significantly higher storage fees to recover the car. She later informed Haven the car had been destroyed and was no longer in storage.

Haven issued a response in August 2023. It accepted there was a delay in it informing Miss Z of its decision, and this meant she was not aware of the increased storage cost. Haven acknowledged that by the time it had agreed to pay storage costs, the storage yard had disposed of the car. Haven requested a certificate of destruction to consider the next steps.

Miss Z was unhappy with Haven's response. She said she didn't receive an offer to pay storage costs and she was unhappy that Haven had sent debt collectors for her insurance premiums.

In November 2023, Haven told Miss Z it would not pay the value of the car as it had declined the claim. It agreed to pay £504.75 based on the salvage of the car. Haven told us it accepted it should have advised her earlier it was not providing cover as she had no financial interest.

Miss Z was not happy with Haven's offer. She said this was not enough to allow her to get a new car and pay for any increased insurance costs. She said if Haven had responded sooner, she would have been able to recover the car and been in a better position financially.

Because Miss Z was not happy, she referred her complaint to the Financial Ombudsman Service. In referring her complaint, Miss Z also said she was unable to afford the increased storage costs by the time Haven told her it wouldn't recover the car. She said she had been

impacted mentally, physically and financially as a result of Haven's actions, and ultimately lost her job.

Miss Z wanted at least £3,500, which she felt represented the value of the car she'd lost. She also wanted compensation for having lost her job.

Our Investigator didn't uphold the complaint. He felt Miss Z had made a qualifying misrepresentation that was deliberate, so it wasn't unfair for Haven to avoid her policy. He accepted Miss Z had to chase for updates and was given conflicting information by Haven. He also accepted that Haven did first say it would recover the car from storage, but he felt there wasn't sufficient evidence to explain why Miss Z hadn't recovered the car before Haven had said it would. He didn't recommend Haven pay the value of the car as he felt any recommendation would be unenforceable. He said this was because Miss Z had no insurable interest in the car. He also felt that the compensation Haven had offered to pay Miss Z was fair in the circumstances.

Miss Z didn't agree with the Investigator. She said if Haven had not said it would collect the car, she would have collected it and would still have the car. She felt once Haven made the decision to recover the car, this would be binding. She didn't agree the misrepresentation was deliberate. She also said Haven had emailed her after her complaint, to say it would have paid the car's total value, but it didn't because she didn't answer the call it made to her, and the amount therefore decreased – she felt this was unfair.

Miss Z did accept she had put the wrong information in when she applied for the policy and that this meant her policy was cancelled. She said she had no issue with this. She said she accepted liability for this and any costs incurred, including the premiums she'd paid. She said her issue was Haven's actions after the policy had been cancelled, and after the car had been found.

I issued a provisional decision. In it I explained why I intended to require Haven to pay Miss Z for the loss of the vehicle and £350 compensation. The provisional decision's reasoning forms part of this final decision, so I've copied it in below. Finally I invited Miss Z and Haven to provide any further comment or evidence they would like me to consider before issuing this final decision.

What I've provisionally 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.

Misrepresentation

I understand Miss Z accepts she provided the wrong information when she applied for the policy and this resulted in her policy being cancelled. But, because this affects my consideration of a fair outcome, I've considered whether Haven acted fairly.

The relevant law in this case is the Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. 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, reckless or careless.

Miss Z accepts she provided the wrong information when she applied for the policy and she accepts the policy was cancelled as a result.

Haven has provided an extract of the questions it says Miss Z was asked when she applied for the cover via a comparison website. This includes the question 'Who will the car be registered to?' along with guidance notes that say 'This will be the person or company named on the V5 registration document, known as the registered keeper. The registered keeper and owner aren't always the same person'.

Haven also provided a copy of the statement of fact. This document says it outlines the details provided by Miss Z and I accept this is a good indication of the question Miss Z was asked and the answers she provided. Under 'registered keeper' it states 'Company Other Than Proposer'.

Taking all the above into account, I think its most likely Miss Z was asked who the car was registered to, and she answered this was a company, other than the proposer (herself).

The logbook for the car shows the registered keeper was Miss Z's ex-partner, who I'll refer to as K. K is a private individual, in his capacity as registered keeper of the car. Miss Z says she made an error when applying and may have accidentally put down the wrong information, so I'm satisfied she didn't take reasonable care not to make a misrepresentation.

Haven has given us information about its underwriting criteria. This shows on the matter of the registered keeper, it would have declined cover if Miss Z had answered anything other than herself (proposer) or a company other than proposer. Because K was neither, I'm satisfied that if Miss Z had taken care not to make a misrepresentation, Haven wouldn't have offered cover. So, I'm satisfied there's been a qualifying misrepresentation.

When a qualifying misrepresentation is reckless or deliberate, CIDRA allows insurers to retain the premium. Haven believes the misrepresentation should be treated as reckless or deliberate. Miss Z says she made a mistake. CIDRA's test for this includes whether the consumer knew the information they provided was untrue or misleading or did not care whether it was untrue or misleading. I'm satisfied that Miss Z would have clearly known the registered keeper was a private individual, and not a company. So, I feel it's fair for Haven to treat the misrepresentation as, at the very least, reckless.

It's not clear if Haven has avoided the policy or cancelled the policy from a certain date. It's referred to both during the claim and complaint. I'm satisfied in relation to the registered keeper, it's fair for it to avoid the policy if it wishes and decline cover for any claim. In cancelling the policy, Haven wouldn't have followed CIDRA. But I think it's still fair for Haven to do this as I can't see that this leaves Miss Z worse off.

And because I agree with Haven the misrepresentation was reckless, I'm satisfied it's fair for Haven to retain the full insurance premiums or seek payment of it.

After the car was found

Haven's notes show it was advised in May 2023 by Miss Z the car had been found. Its notes also show it told the finance company (that provided finance to K for the purchase of the car) in May 2023, it retained an interest in the car and it would arrange collection of the car from where it was stored.

I think Miss Z acted reasonably in relying on what Haven told the finance company. In any case, the notes show later on in May 2023, Haven told Miss Z the car would be collected by its agents.

Based on the above, I'm satisfied that Haven led Miss Z to believe it would be recovering the car, and dealing with it as her insurer, despite having previously cancelled the policy. I think Miss Z acted reasonably in waiting for further information and instruction from Haven.

Haven made the decision to decline cover again (and declined to recover the car) in early June 2023. Haven said this was due to discrepancies surrounding the legal owner of the vehicle. But the evidence I've seen shows Miss Z had told Haven in March 2023 that the car finance had been taken out in K's name. For this reason, I think Haven had all the information it needed to make this decision, when Miss Z informed it the car had been found. So I think Haven acted unfairly in telling Miss Z in May 2023 it would recover the car.

In addition, despite Haven's decision to decline cover in early June 2023, it didn't inform Miss Z of this until 28 June 2023. This was around 4 weeks after it had told her it would recover the car and around 5 weeks after it had informed the finance company it would recover the car.

The certificate of destruction is dated 30 June 2023. This shows the car was likely destroyed on this date. For the reasons outlined above, I think that as a result of Haven's error in agreeing to recover the car, and its delay in informing Miss Z it was no longer going to do this, Miss Z was left with little time to make a decision and arrange the money needed to pay the storage fees and recover the car herself.

Miss Z says she was unable to arrange the money needed to pay the storage at such short notice. And in the circumstances, I'm persuaded this was likely the case. Based on the emails she's provided, the storage and recovery fees up to the date of destruction were around £1,274. She's said this was close to her monthly income and she was living 'paycheck to paycheck' with no savings and no money at all.

Haven says Miss Z agreed for the car to be disposed. I've not seen evidence to show this. Importantly, I've not seen evidence to show Miss Z acted unreasonably in the circumstances, given that she couldn't afford to pay the fees that had built up by the time Haven informed her it wouldn't recover the car.

What would have happened?

In considering what's fair and reasonable in the circumstances, I've considered what would have happened differently if Haven had not said it would recover the car. This allows me to consider what Haven needs to do to put Miss Z in the position she'd have been in had Haven not made its mistake. To be clear, this is not based on the terms of Miss Z's policy, or whether the policy was active at that time. It is based on the Financial Ombudsman Service's approach to what's fair and reasonable.

Miss Z said the initial recovery fee when she informed Haven the vehicle had been found, was £320. I've not seen evidence to disprove this, and I have no reason to doubt this, so I'm persuaded this was likely the case. Miss Z says she would have borrowed money from her mother to pay this amount, and I'm satisfied she'd have been able to pay this to recover the car if she'd known Haven wasn't going to recover it. And I'm satisfied she'd have been able to pay this before further storage costs were incurred.

Although the finance was in K's name, and K was the registered keeper, Miss Z has said the car was a gift to her from K. Miss Z has also provided evidence to show she made payments towards the finance. She's also told our service she paid the full repair, service and running costs for the car. I've no reason to doubt what Miss Z has said, and I've not seen any evidence to suggest this is untrue. For this reason, I'm satisfied the car was effectively hers and that she would eventually have owned it once the finance was paid.

For the reasons outlined above, I think if Haven had not said it would recover the car, Miss Z would have paid the recovery fee and recovered the car herself. So because of Haven's error, I think Miss Z lost a car that was effectively hers and that she would most likely have eventually owned. On this basis, I think it's fair for Haven to pay Miss Z the value of the car at the time it was found, less the £320 she would have had to pay to recover it. Because I think Miss Z would likely have paid off the finance if she retained the car, I'm satisfied that paying her the value of the car doesn't mean she's better off than she otherwise would've been.

I've not seen evidence to show the car suffered significant theft related damage that would reduce its value. So, I think it's fair to assume this wasn't the case. But I invite Haven to provide any evidence of damage and loss of value. Haven's notes show it considered the pre-theft value of the car to be £3,365, and I think this is a fair amount to use for the car's value in the circumstances. Deducting £320 from this amount comes to £3,045, so this is what I think Haven should pay Miss Z.

Because of what I've said above about Miss Z making a reckless misrepresentation, I think it's fair for Haven to deduct from the £3,045, if it wants to, any payment that is still due for the insurance premiums. Haven previously offered Miss Z £504.75. It can also deduct this amount from the £3,045 if it has paid this to Miss Z already.

Poor service

In considering fair compensation, I've also considered other aspects of Haven's service, and the impact of this on Miss Z.

Haven's initial letter to Miss Z in April 2023 said it was going to cancel her policy, but it didn't explain why. I think this caused Miss Z avoidable confusion.

Miss Z has also provided evidence of an email from Haven where it said it didn't consider the misrepresentation reckless or deliberate. But Haven later told our service it was treating it as reckless or deliberate. Although Haven was entitled to treat the misrepresentation as reckless or deliberate, I think the inconsistent information it provided to Miss Z caused her avoidable confusion.

I also think Haven's actions in agreeing to recover the car, and delaying communication of its decision not to, caused Miss Z considerable distress, inconvenience and worry.

Miss Z says Haven emailed her to say it was going to offer her the vehicle's value following her complaint, but it lowered the amount because she didn't answer the call. I've not seen evidence to show this, and I've only seen evidence to show Haven emailed her to say it was going to offer to pay the full storage fees.

Most of the impact Miss Z says she experienced was because she was without a car she could drive, following Haven's offer to recover the car in May 2023. But Miss Z told our service she was unable to afford the storage and recovery costs in June 2023, which were around £1,274. She also told us she had no savings, no money and was living 'paycheck to paycheck'. In response to Haven's offer in November 2023, she also said that her subsequent insurance premiums would cost £6,000.

Taking Miss Z's comments into consideration, I'm not persuaded she would have been able to afford the costs of the increased insurance premiums to drive the car, so I think she'd always likely have been without a car she could drive, even if Haven had not made its mistake.

Miss Z has said the stress caused her to experience health problems, which ultimately led to losing her job. I've not seen sufficient evidence to persuade me that the stress caused solely by Haven's mistakes caused her health problems. I think the theft itself, followed by the cancellation of her insurance policy, and the prospect of unaffordable increased premiums despite the car being found, would have caused Miss Z substantial stress, and these were not a result of a mistake by Haven or something it did unfairly. In the circumstances, I don't think it's fair to hold Haven responsible for Miss Z's health problems and her losing her job.

I think the mistakes Haven did make would have caused Miss Z considerable distress and worry, and this impact has lasted over many months. So, I think it's fair for Haven to pay her compensation for this. Miss Z has said the car held sentimental value, so I accept that losing the car would've caused her considerable additional distress. Taking all the above into account, I think Haven should pay her £350 compensation for the distress caused.

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 Z accepted my provisional decision. Haven didn't respond. So I don't have any reason to change the outcome I proposed in my provisional decision.

My final decision

For the reasons given above, I require Haven Insurance Company Limited to:

- Pay Miss Z £3,045, for the loss of the vehicle, subject to my comments above.
- Pay Miss Z £350 compensation, for the distress caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Z to accept or reject my decision before 4 December 2024.

Monjur Alam
Ombudsman