

The complaint

Mrs J is complaining Acasta European Insurance Company Limited declined a claim she made on her GAP insurance policy.

What happened

In July 2022 Mrs J bought a car through a car dealership. She also bought a Combined GAP Insurance policy to cover any shortfall between a motor insurer's settlement and the price she paid for the car in the event the car's stolen or written off. The policy was provided by Acasta.

In July 2024 Mrs J's car was written off. Mrs J made a claim against her GAP insurance policy after claiming on her private car insurance policy. But Acasta declined the claim as it said it had discovered the car had been used as a private hire vehicle. And it said the policy excluded cover for vehicles used as a private hire vehicle.

Mrs J thought Acasta was being unfair. She accepted the car had previously been used that way, but they'd stopped using it as a private hire vehicle and only had a private car insurance policy. So she maintained it wasn't being used as a private hire vehicle at the time of the accident.

I issued a provisional decision partly upholding this complaint. And I said the following:

"I should first set out that I'm only considering Acasta's actions in this decision. Mrs J has also said she's unhappy with the way the policy was sold to her – in particular that she told the dealership she'd be using the car as a private hire vehicle. But Acasta didn't sell the policy and the dealership is not a party to this complaint. So I'm unable to comment on anything the dealership did or didn't do.

Essentially, Acasta has said it's not liable to pay the claim for two reasons:

- 1. It was told the car would be used as a private hire vehicle when the policy started; and*
- 2. The policy specifically excludes cover for private hire vehicles.*

I shall address each point separately.

Misrepresentation

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. One of these is how clear and specific the insurers questions were.

So, when entering into the insurance policy, Acasta needed to ask Mrs J clear questions as part of the application process. Acasta says it didn't sell the policy, so it said any complaint about what questions Mrs J was asked needed to be directed to the dealership. I agree with Acasta that the broker had a responsibility to gather all the information Acasta asks for so that they could ensure Mrs J did take reasonable care not to make a misrepresentation. But Acasta still had a responsibility to ask Mrs J – through the broker – clear questions as part of the application process. And it hasn't shown it did so.

Secondly, as I said, even if Acasta demonstrates Mrs J made a misrepresentation, it also needs to show it would have either offered the policy on different terms or not at all. I can see the Investigator has asked Acasta to demonstrate this several times, but it hasn't done so. So, based on the information Acasta has provided to date, I haven't seen enough to show that there's been a qualifying misrepresentation.

Claim declination

The terms of the policy set out that the policy doesn't cover "Excluded vehicles". And one of the examples of an excluded vehicle is it being used for hire, reward or as a taxi. Mrs J doesn't believe this term applies because the car wasn't being used for private hire at the time of the accident. However, the policy doesn't specify that it only applies to when the car was being used. So, while I acknowledge Mrs J had stopped using the car for private hire shortly before the accident, the fact of the matter is it was being used for hire or reward for the first two years of the policy. I'm satisfied, therefore, that it does fall within the category of an "excluded vehicle".

So under the strict application of the policy, there was no cover for Mrs J's vehicle. But I've also thought about whether this is fair. Where an insurer is seeking to rely on a policy exclusion or limitation, it needs to be shown that this was material to the loss. Acasta has said it provides separate more expensive policies for private hire vehicles because they generally travel more miles than when a car is being used for personal use – i.e. there will generally be a more significant drop in value when a car is used for private hire.

In this case, Mrs J's vehicle travelled around an average of 20,000 miles per year. I think this is more than a car will generally travel when used for personal use only. This increased mileage will have caused the car's market value to decrease by more than Acasta will have reasonably anticipated by offering a personal use GAP insurance policy. So I can't reasonably conclude that the fact Mrs J used the car for private hire wasn't material to the loss. It follows, therefore, that I don't think it was unreasonable for Acasta to have declined Mrs J's claim.

However, I'm also conscious that I don't think Mrs J could ever have benefited from this policy given it seems the car was an "excluded vehicle". So I don't think Acasta was ever covering a risk. I think, therefore, the fair and reasonable thing here is that it refunds the premium Mrs J paid for the GAP insurance policy."

Mrs J didn't accept my provisional decision and, in summary, said the following:

- She reiterated she clearly told the dealership that the car would be used for private hire. Despite this, she was sold a standard GAP policy without any mention that it would be invalid for this use.
- She believed the dealership is responsible for the dealership's actions. She said it chose to work with the dealerships which makes it accountable for how its products are

represented and sold.

- She purchased the cover in good faith to protect against a financial shortfall in the event of total loss. She's suffered an around £5,000 shortfall as a result of the accident which was precisely the situation she was seeking to protect herself from.
- She also reiterated the car wasn't being used for private hire at the time of the accident as it had been changed to personal use well before the incident and provided evidence to support this.
- She highlighted she was a disabled person having been through significant cancer treatment and had bought the car for her son as he was struggling to obtain credit. And she said her son had to borrow money after this to stay afloat.

Acasta accepted my provisional 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.

I've considered Mrs J's additional comments, but I don't think she's raised anything materially new to what she'd said before. So I see no reason to reach a different conclusion to the one I reached in my provisional decision.

As I said in my provisional decision, I'm aware Mrs J's car wasn't being used as a private hire vehicle any longer when the accident occurred. And this isn't in dispute. But the policy doesn't say this only applies at the time of loss. It needs to be remembered that this isn't an annual policy, but it was a 48 month policy – i.e. it's not a policy that renews each year. The terms of the policy say an excluded vehicle includes where it's being used as a private hire. For the first two years of the policy it was used as a private hire vehicle. So I cannot say it was unreasonable for Acasta to say the car wasn't covered by the policy.

I note Mrs J says Acasta is liable for the dealership's actions. I agree that Acasta can be held liable for the dealership's actions where it was acting on behalf of Acasta. But I don't think that's the case here. From what Mrs J has told us, the dealership was arranging a GAP insurance policy on her behalf. She says she told the dealership the car was being used for private hire. In arranging the insurance policy, the dealership was acting on Mrs J's behalf as a broker. Acasta isn't liable for the dealership's actions in this regard. And, as I said in my provisional decision, I'm unable to comment on anything the dealership did or didn't do.

I've considered Acasta's responsibilities as an insurer when selling the policy. It was required to highlight significant and unusual terms. Insurers generally do this in an Insurance Product Information Document (IPID). Acasta produced an IPID alongside Mrs J's insurance policy and this said:

"What is not insured?"

Ineligible vehicles: There are certain vehicles we can't cover such as taxis, couriers, vehicles used for hire and reward or emergency vehicles or vehicles over £75,000. Please refer to the full terms and conditions."

So Acasta did highlight that it doesn't cover vehicles being used as a taxi under the terms of this policy. So I'm satisfied it did make this sufficiently clear to Mrs J.

I recognise a significant shortfall has been incurred arising from the accident. And I'm sorry to hear about the impact this has had on Mrs J and her son. But, for the reasons I've set out above, I can't say Acasta has acted unreasonably in the handling of the claim.

Neither party has made any material submissions as to whether Acasta should refund the premium Mrs J paid. So I still think it should fairly refund this.

My final decision

For the reasons I've set out above and in my provisional decision, it's my final decision that I require Acasta European Insurance Company Limited to refund the amount Mrs J paid for the GAP Insurance policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 27 June 2025.

Guy Mitchell

Ombudsman