

The complaint

Miss S complains about how Mulsanne Insurance Company Limited handled a claim made on her motor insurance policy and that it then declined the claim.

What happened

Miss S took out a motor insurance policy with Mulsanne through an online comparison site. When her car was damaged in an accident, she tried to claim on her policy. Mulsanne took some time to investigate the claim and Miss S was unhappy that she hadn't been provided with a courtesy car, and that she had incurred travel expenses.

Mulsanne then declined the claim. When Miss S complained, it said she'd exceeded the annual mileage estimate for her policy and she had been commuting at the time of the accident. And it considered this to be a breach of the policy's terms and conditions, which entitled it to decline her claim.

our investigator's view

Miss S brought her complaint to us and our Investigator thought it should be upheld in part. She thought Miss S wasn't entitled to a courtesy car until repairs had been authorised. And she thought the policy excluded expenses incurred due to loss of use. She thought there had been a qualifying misrepresentation because she thought Miss S had been commuting at the time of the accident. But she didn't think Mulsanne had established this was deliberate or reckless.

She said Mulsanne should reconsider Miss S's claim. If it decided the misrepresentation was careless and it would have offered Miss S cover without the misrepresentation, but charged more, then if it decided to settle the claim, it should do so proportionately. She thought that if Mulsanne could show that it wouldn't have offered Miss S cover for commuting, then it was entitled to avoid the policy and decline the claim as there would have been a careless misrepresentation. It should then refund the premiums, but it was entitled to recover its outlay from Miss S.

Mulsanne doesn't agree with the Investigator and has asked for an Ombudsman's decision. Mulsanne said Miss S was travelling for work purposes at the time of the accident and this wasn't covered by the policy.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Miss S and to Mulsanne on 24 June 2025. I summarise my findings:

I could understand that Miss S felt frustrated and stressed by the length of time Mulsanne took to validate her claim and then by its decision to decline it. I was sorry to hear that this had an effect on her mental health.

I firstly considered what Miss S told Mulsanne when she first reported her claim. The two conversations she had with Mulsanne on consecutive days when she was asked for the purpose of her journey were:

"I was going to my office to pick up a new laptop. I had already done that, so I was on my way back home". Miss S then confirmed she was travelling from work to home.

A day later, when asked again about the purpose of her journey, Miss S stated *"I went to pick up laptop."* Mulsanne asked where the laptop was being collected from and Miss S said, *"from an office, IT department."*

And I was satisfied that Miss S said she was travelling home from her place of work and so, by definition, she was commuting on this occasion. I could see that Miss S later said she'd made an error and changed her account. But I was satisfied that it was reasonable for me to rely on what she first told Mulsanne as that was closer to the event. And I thought it was reasonable for Mulsanne to be concerned about the accuracy of the information Miss S later provided.

But Miss S didn't have cover for commuting on her policy. This was specifically excluded from cover, as stated on her policy certificate.

Our Investigator thought the relevant law in this case was 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 (a policy). The standard of care is that of a reasonable consumer.

As a general principle the consumer needs to answer the questions the insurer asks them. This is important as the insurer will then use that information to decide if it wants to offer cover, and if it does on what terms.

Often when taking out a motor insurance policy a consumer will be asked what they use the car for. They might be given a number of options like, social only, or social domestic and pleasure including commuting, or business use.

If the consumer is asked what they use their car for, and they make a misrepresentation here, for example they say they only use their car for social, domestic and pleasure, but they don't say they use their car for commuting – when in fact they do use their car for commuting, we think CIDRA applies here. This is because the insurer will have used the information the consumer gave about themselves and their use of their car and factored that in to what cover it offers that consumer.

But if the consumer is asked to select what cover they want or what cover they would like we don't think CIDRA applies here. This is because the insurer isn't using the information the consumer gave it to determine what cover it offers that consumer. It's essentially carrying out an instruction from the consumer.

And, from what Mulsanne had told us, Miss S selected her level of cover. It hadn't been able to provide evidence of any questions asked of Miss S about her level of cover nor any evidence of advice given to assist her to provide accurate answers. It had only provided a screenshot to show that Miss S was asked to confirm that her details were correct.

So I was satisfied that CIDRA didn't apply here. And the actions Mulsanne could take weren't ones it could take under CIDRA, and any action it took would need to be detailed in the policy terms and conditions. So it may, as Mulsanne had done here, refuse to pay Miss S's claim as she didn't select cover for commuting and then she was involved in an accident while commuting.

But even though CIDRA didn't apply, I needed to consider why Miss S chose the answer she did. Our approach is that if we think the consumer deliberately didn't select commuting in order to get a cheaper premium for example, we're unlikely to say the insurer can't take the action it did (assuming it's acting in line with the policy terms and conditions).

But if for example we think the consumer hasn't understood what commuting was and that their actions are more like a careless misrepresentation, although CIDRA doesn't apply, we might think following a similar approach to CIDRA leads to a fair and reasonable outcome on the complaint.

I couldn't see that Mulsanne had said that Miss S made a deliberate misrepresentation. And I was persuaded that Miss S had provided a convincing explanation for why the mileage recorded between her last two MOTs wasn't relevant to Mulsanne's decision. This was because the policy year started six months after the first MOT. And so the mileage that Mulsanne raised concerns about wasn't accrued solely within the policy year. So I didn't consider that further as I didn't think it showed that Miss S was using her car for commuting.

Miss S had provided evidence to show that she was a hybrid worker and would attend a place of work only rarely. And I thought Miss S was open about her purpose for driving when she first reported the claim, showing that she didn't understand collecting a new laptop from her employer to be commuting. So I was satisfied that Miss S's action in selecting her level of cover was like a careless misrepresentation.

Under CIDRA, if the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation. If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

So I needed to see what Mulsanne would have done had Miss S selected the right level of cover. If Mulsanne would have offered the level of cover Miss S needed, but at a higher price, then I might think that it was fair that Mulsanne settled the claim proportionately. But this would be on a fair and reasonable basis, not as a remedy under CIDRA as CIDRA wouldn't apply here.

From what Mulsanne had told us, it wouldn't have refused Miss S cover if she had selected commuting. It said it could have added the correct cover and continued the cover. But it hadn't told us if this would have been at a higher price. If it remained unable to provide evidence that it would have charged Miss S a higher premium if she had selected commuting, I currently thought it should reasonably reconsider her claim under the remaining terms and conditions of her policy without applying a proportionate settlement.

If Mulsanne was able to provide evidence to show that it would have offered Miss S cover for a higher premium, it would have to consider the claim and settle it proportionately if it accepted it. I currently thought that would be fair and reasonable in keeping with our approach.

Our Investigator considered Miss S's other concerns about the handling of her claim. And I agreed with her view that Mulsanne didn't unfairly delay progressing the claim as it was entitled to validate it and this can take time. Also, under the policy's terms and conditions, Miss S wasn't entitled to a courtesy car until her car's repairs were authorised, and this had yet to occur. And the policy excluded loss of use and so I couldn't say that Mulsanne should be held responsible for Miss S's alternative travel costs.

Subject to any further representations from Miss S and Mulsanne, my provisional decision was that I intended to uphold this complaint in part. I intended to require Mulsanne Insurance Company Limited to do the following:

1. Reconsider Miss S's claim under the remaining terms and conditions of her policy.
2. If it accepted it and if it remained unable to provide evidence that it would have charged Miss S a higher premium if she had selected commuting, it should reconsider her claim without applying a proportionate settlement.
3. Only if it was able to provide evidence that it would have charged Miss S a higher premium with commuting added, then it was entitled to settle the claim proportionately, if it accepted it.

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 S replied that she accepted my provisional decision. Mulsanne didn't provide any further representations after I granted it extra time to consult its underwriters. And so, as I have received no further representations for consideration, I can see no reason to change my provisional decision.

Putting things right

I require Mulsanne Insurance Company Limited to do the following:

1. Reconsider Miss S's claim under the remaining terms and conditions of her policy.
2. If it accepts it and if it remains unable to provide evidence that it would have charged Miss S a higher premium if she had selected commuting, it should reconsider her claim without applying a proportionate settlement.
3. Only if it is able to provide evidence that it would have charged Miss S a higher premium with commuting added, then it is entitled to settle the claim proportionately, if it accepts it.

My final decision

For the reasons given above, my final decision is that I uphold this complaint in part. I require Mulsanne Insurance Company Limited to carry out the redress set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 20 August 2025.

Phillip Berechree
Ombudsman