

The complaint

Miss G complains that Haven Insurance Company Limited unfairly declined a claim on her commercial vehicle insurance policy and cancelled that policy.

What happened

The subject matter of the claim and the complaint is a commercial vehicle, first registered in late September 2018.

Miss G was living with her partner, Mr H and she was looking after children of school age. In April 2021, the mother of Ms G's partner - Ms H - became the registered keeper of the vehicle. The owner of the vehicle was a leasing company.

For the year from late July 2021, Miss G used a broker associated with Haven to arrange insurance for the vehicle on her behalf. According to a statement of fact document, the owner of the vehicle was a leasing company and that the registered keeper of the vehicle was a "parent" of Miss G.

Miss G got a policy to cover her as policyholder and Mr H as a named driver. Haven was the insurance company that was responsible for dealing with any claim or for cancelling the policy.

Unfortunately, in November 2021, Miss G reported an accident. Haven dealt with that claim by arranging repair.

Miss G, through the broker, renewed the policy for the year from late July 2022.

Unfortunately, in mid-October 2022, Miss G reported that that someone had stolen the vehicle (and its contents).

Where I refer to "Haven", I refer to the above-named insurance company. Much of the complaint is about communications with the broker after it started acting as a claims-handler on behalf of Haven. Insofar as I hold Haven responsible for such communications, I may refer to them as being with Haven.

By a letter dated mid-November 2022, Haven said that, when Miss G took out the policy, she had given incorrect information about the ownership of the vehicle. Haven said that it wouldn't have issued cover. Haven said it had cancelled the policy and declined the claim.

Miss G complained to Haven that it should pay that claim.

By a final response dated late November 2022, Haven referred to Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). Haven said that, under CIDRA, it could avoid the policy, refuse any claims and need not return any premium. Haven turned down the complaint.

Miss G brought her complaint to us in mid-January 2023.

our investigator's opinion

Our investigator recommended that the complaint should be upheld. She thought that Haven hadn't dealt with matters correctly as per CIDRA. She said that Haven should've voided the policy, but instead chose to cancel it, acknowledging that the policy existed at the point that Miss G made the theft claim.

The investigator recommended that Haven should:

1. deal with the claim in line with the remaining policy terms; and
2. pay £200.00 in compensation for the distress and inconvenience; and
3. remove the record of cancellation.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Miss G and to Haven on 19 September 2023. I summarise my findings:

Miss G made a qualifying misrepresentation and Haven avoided the policy in line with CIDRA. So I wasn't minded to find it fair and reasonable to direct Haven to deal with the theft claim, or to pay compensation for distress and inconvenience, or to change its records.

As the misrepresentation was reckless or deliberate, Haven didn't have to return the premium.

Subject to any further information from Miss G or from Haven, my provisional decision was not to uphold this complaint. I didn't intend to direct Haven Insurance Company Limited to do any more in response to this complaint.

Miss G disagreed with the provisional decision. She says, in summary, that:

- She told the broker it was her partner's mum who was the owner.
- All the letters say cancellation not avoidance.

Haven hasn't responded to the 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.

CIDRA obliges a consumer to take reasonable care not to make a misrepresentation when taking out or varying an insurance policy. If the consumer doesn't take such care, and if the consumer makes a "qualifying" misrepresentation, then the insurer has certain remedies under CIDRA.

Where the qualifying misrepresentation has led an insurer to issue a policy that it wouldn't otherwise have issued, then the remedies under CIDRA include allowing the insurer to "avoid" the policy and to refuse any claim.

Unfortunately, I haven't seen much evidence of what happened when Miss G took out the policy in July 2021 and when she renewed it in July 2022.

But from the statement of fact document in July 2021, I find that Miss G had told Haven that one of her parents was the registered keeper of the vehicle. That was incorrect. Ms H was the registered keeper. Miss G was in a relationship with Ms H's son. So Ms H wasn't the mother or parent of Miss G.

So I don't accept that Miss G took reasonable care to avoid making a misrepresentation. And since Miss G must've known Ms H wasn't her parent, I consider that she made a misrepresentation that was not merely careless but was either reckless as to the truth or deliberate.

When she renewed the policy in July 2022, Miss G made a change to the policy so that she was no longer covered for carriage of her own goods. So I find it likely that she said that she no longer needed that cover. In any event, I haven't seen any evidence that Miss G was involved in any business.

From the policy schedule for 2022, I find that Miss G told Haven that one of her parents was still the registered keeper of the vehicle. That was incorrect. Ms H was still the registered keeper.

So, for the same reasons as before, I consider that Miss G made a misrepresentation that was not merely careless but was either reckless as to the truth or deliberate.

As Miss G must've been faced with a question whether she, her partner or a parent was the registered keeper, I consider that Miss G ought reasonably to have known that it was relevant to Haven.

I accept Haven's underwriting evidence that if, rather than Miss G describing the registered keeper as her "parent", Miss G had described her as "other", Haven wouldn't have issued or renewed the policy. So Miss G's misrepresentation made that difference to Haven. So I find that Miss G made a qualifying misrepresentation.

So, under CIDRA, Haven was entitled to "avoid" the policy and refuse the claim (and, as the misrepresentation was reckless or deliberate, keep the premium).

The investigator's opinion was correct that CIDRA gives a remedy of avoidance, but it doesn't give a remedy of cancellation (without retrospective effect).

In response to the investigator's opinion, Haven referred to the following policy term:

"Cancellation with immediate effect / avoidance

At Our option, We or Your Broker may cancel Your policy with immediate effect or void Your policy from inception at any time where; there is evidence of fraud or a valid reason for doing so, including but not limited to:

- 1. Deliberately or recklessly telling Us something which is untrue or misleading in response to any question We ask You when applying for, amending or renewing Your policy.*
 - 2. Carelessly misrepresenting relevant information which, if correctly represented at the time of applying for, amending or renewing Your policy would have caused Us to decline You for cover.*
 - 3. Where We have evidence of fraud or dishonesty...*
- Where fraud is identified, We may retain all premiums paid."*

However, I note that CIDRA (Section 4) says that an insurer's only remedies for misrepresentation are those set out in CIDRA. Also, CIDRA (Section 10) prohibits

“contracting out” of CIDRA. So I wouldn’t find it fair and reasonable for Haven to rely on policy terms putting Miss G in a worse position than CIDRA.

Nevertheless, the word “avoid” is a difficult word for a difficult concept. Its proper meaning in this context is to treat the policy as though it never existed. But, in ordinary use, the word “avoid” might suggest a shirking of responsibility. So many in the insurance industry prefer to use other wording including “treat as void” or “cancel”.

Miss G’s response to the provisional decision

Miss G has maintained that she told the broker it was Ms H who was the owner of the vehicle.

However, from the broker’s terms of business, I find that the broker was acting on Miss G’s behalf in setting up and renewing the policy. So it was on her behalf that the broker told Haven that a parent of Miss G was the registered keeper of the vehicle. So I hold Miss G responsible for the misrepresentation to Haven.

I understand that Miss G is pursuing a complaint against the broker that she gave it correct information which it didn’t pass on to Haven. That will require investigation and I make no comment on it at this stage.

Miss G has said that all the letters mention cancellation rather than avoidance. So I’ve looked closely at the letters Haven sent in November 2022. The letter of mid-November said that Haven wouldn’t have accepted the risk and had “cancelled” the policy.

However, Haven’s final response included the following:

“Unfortunately, had we known the correct details of the insured vehicle’s Registered Keeper at policy inception and the subsequent renewals we would not have been in a position to offer you a policy of insurance on any terms. As such, under the Consumer Insurance (Disclosure and Representations) Act 2012, we are entitled to avoid the contract of insurance, refute any claims made and need not return premiums paid.”

So I find that the final response made clear that because of the misrepresentation, Haven was exercising the remedy to “avoid” the policy and refuse the claim (and, as the misrepresentation was reckless or deliberate, keep the premium).

So I don’t agree that Haven cancelled the policy rather than avoiding it. And I don’t agree that cancelling would’ve been worse for Miss G than avoiding the policy.

Conclusion

Overall, I conclude that Miss G made a qualifying misrepresentation and Haven avoided the policy in line with CIDRA. So I don’t find it fair and reasonable to direct Haven to deal with the theft claim, or to pay compensation for distress and inconvenience, or to change its records. Also, as the misrepresentation was reckless or deliberate, Haven doesn’t have to return the premium.

My final decision

For the reasons I’ve explained, my final decision is that I don’t uphold this complaint. I don’t direct Haven Insurance Company Limited to do any more in response to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 6 November 2023.

Christopher Gilbert

Ombudsman