

The complaint

Miss G complains that QIC Europe Ltd unfairly avoided her motor insurance policy after she made a claim.

QIC is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of its agents. As QIC has accepted it is accountable for the actions of the agents, in my decision, any reference to QIC includes the actions of the agents.

Miss G is represented in this complaint by her father, Mr G. For ease, I'll refer to anything said by Mr G as being said by Miss G.

What happened

In late 2022, Miss G made a claim under her motor insurance policy with QIC after she was involved in an accident with another vehicle.

A few weeks later, QIC told Miss G it was avoiding her policy. It said she hadn't provided accurate information when she took it out and it wouldn't have offered her the policy if she'd provided the correct information.

It said her claim would not be met and it retained the right to recover any outlay it was obliged to make in relation to a claim from a third party.

Miss G raised a complaint, but QIC maintained its position. So, Miss G asked our service to consider the matter.

Our investigator didn't think Miss G's complaint should be upheld. She thought QIC had acted fairly, in line with relevant legislation.

Miss G disagreed with our investigator's outcome. She felt she had taken reasonable care not to make a misrepresentation. She thought the broker's website was ambiguous when selecting the level of cover. She didn't agree that QIC wouldn't have offered her cover if she'd selected business use when she applied for the policy. Her representative also commented that QIC had retained Miss G's premium despite what it says in the legislation about returning it. So, the complaint has been passed to me to decide.

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.

Having done so, I've decided not to uphold Miss G's complaint. 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.

Reasonable care

QIC says Miss G failed to take reasonable care not to make a misrepresentation when she took out the policy in January 2022. It says the policy was taken out on the basis that her class of use was social, domestic and pleasure, but it transpired that this information was inaccurate and that her vehicle was in fact used for business use.

Miss G has acknowledged that she didn't request cover for business use, but she says this was an innocent mistake and not intentional.

QIC says Miss G took out the policy via a comparison site. It's provided screenshots of what she would have seen at the time.

For the question "*What do you use your car for?*" there were three options – "*Social, domestic and pleasure only (SDP)*", "*Social, domestic, pleasure and commuting (SDPC)*" and "*SDPC and Business Use*". There is also a description for each option.

The description for SDPC says it "*includes commuting to and from your single permanent place of work*". The SDPC & Business Use description says this also includes business use and goes on to say: "*Business use is travelling to and from more than one location for business purposes.*"

Before selecting the quotation for QIC's policy, the comparison site advised that "*some providers may ask extra questions to ensure they can offer cover that suits your needs, which may impact your premium*". It also said: "*The important bit. Please check your details and make sure the policy information is suitable for your needs before purchasing.*"

QIC has also provided screenshots to show what Miss G would have seen after moving on to the broker's website. It asks: "*What will your car be used for?*" with a dropdown box to select "*Social, Domestic & Pleasure (SDP)*", "*SDP inc. commuting*" or a "*Business Use*" option.

There is a '?' next to it which allows the applicant to click on to "*Class of Use definitions*".

Miss G's representative has commented that the information on the broker's website is ambiguous. He's referred to wording which says:

"Do I need to select business use on my car insurance policy?"

Providing you only travel to a single place of work then you will not need business use on your policy, though you will need to add commuting. If you travel to more than one place for work, then you will need to select business use in order to be covered correctly."

He thinks it would have been clearer if the statement said: "*If you travel to more than one location with regard to your employment then you will need to add business use*".

I appreciate Mr G believes Miss G would have been more likely to have given accurate information if this statement had been worded differently. However, the definition for “*Business Use – You*” on the broker’s website says:

“This covers personal use, driving to and from work, and use by you for your business and that of your employer (for example, driving to other sites and meetings elsewhere)...”

I’m satisfied, from what I’ve seen, that the questions on both the comparison site and the broker’s website were clear and unambiguous.

The information the broker sent out with the policy documents says:

“We rely on the information you give us when deciding whether or not to offer you an insurance quotation. You must take reasonable care to provide full and accurate answers to the questions we ask when you take out, make changes to and renew your policy. If you do not give us full and accurate information, we or your insurer may cancel your policy (or policies), refuse to pay any claim, pay only part of a claim, alter the extent of your cover or treat your policy as though it never existed. Also, your details may be added to the national Insurance Fraud Register.”

There are further warnings that a “*failure to supply accurate and complete answers may mean that your policy is invalid and that it does not operate in the event of a claim*” on the statement of facts.

So, I’m also satisfied that Miss G was made aware of the importance of checking that the information QIC held was correct, and the potential consequences of providing inaccurate information.

The policy documents show the use of the car as “*Social, Domestic, Pleasure*”. And on the motor insurance certificate under “*Limitations as to use*” it says: “*Use for social domestic and pleasure purposes, including travel between home and any permanent place of work.*” The motor insurance certificate also says: “*This policy does not cover any trade, business or professional use..*” So, Miss G appears to have selected “*SDP inc. commuting*”, rather than “*business use*” when she took out the policy.

In a telephone conversation after the accident, Miss G told QIC she used her car for journeys as part of her employment. The accident occurred when Miss G was carrying out one of her duties for her employer. Given the descriptions on both the comparison website and the broker’s website, Miss G should have said her car would be used for business use. As she didn’t, I think this means Miss G failed to take reasonable care not to make a misrepresentation when she took out the policy.

Qualifying misrepresentation

If a consumer fails to take reasonable care, the insurer has certain remedies providing 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.

Mr G says that after the avoidance of the policy, he and Miss G completed an online application for business use entering the same details for Miss G as before, (except for her name) and it wasn't declined. However, I haven't seen evidence to support this.

QIC has provided a screenshot of its underwriting criteria which shows it would have declined cover for business use for Miss G's occupation. So, I'm satisfied that Miss G's misrepresentation was a qualifying one.

Remedy

The remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

QIC has treated the misrepresentation made by Miss G as "careless" meaning that it didn't consider it to be deliberate or reckless. I think this is fair. If a qualifying breach is neither deliberate nor reckless and the insurer wouldn't have provided the insurance, it may avoid the contract and refuse any claims, but it must return the premium.

As QIC has shown that it would have declined cover if Miss G had provided accurate information when she took out the policy, I think its decision to avoid the policy was fair. Mr G has questioned why the premium wasn't returned to Miss G.

QIC says it retained the premium because Miss G was at fault for the accident. It's referred to wording in its policy which says:

"Any claim made in relation to your vehicle will not be met by the insurer who also retains the right to recover from you any outlay which they are obliged to make (under the various Road Traffic Acts) in relation to a claim from a third party."

QIC says it has had a financial outlay to the third party, which would explain why the premium hasn't been returned.

I understand Miss G disputes being responsible for the accident and is unhappy that QIC admitted liability for it on her behalf. However, her concerns about this go beyond the scope of this complaint. So, I haven't considered these matters here.

I know my answer will be disappointing for Miss G. I understand this has been a very distressing situation for her and I empathise. However, I think QIC's decision to avoid her policy was fair and reasonable, in line with the relevant law.

My final decision

For the reasons I've explained, I don't uphold Miss G's complaint.

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

Anne Muscroft
Ombudsman