

The complaint

Mr C complains that Watford Insurance Company Europe Limited declined his claim on his motor insurance policy.

What happened

Mr C was involved in an accident and he made a claim on his policy. But Watford said Mr C hadn't told it about after-market modifications made to his car. And so it cancelled his policy and declined his claim.

Our Investigator recommended that the complaint should be upheld. She thought Watford had reasonably cancelled the policy. But as the claim occurred before the cancellation, she thought it should deal with Mr C's claim.

Watford replied that the policy had been cancelled because of the undisclosed modifications. It said it wouldn't have offered cover if it had known about them. And so it said it thought it didn't need to deal with the claim.

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.

Watford decided to cancel Mr C's policy when it discovered the undisclosed modifications. 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 (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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it is entitled to avoid the consumer's policy. 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.

Watford thinks Mr C failed to take reasonable care not to make a misrepresentation when he stated in his application via a comparison site that his car had no modifications. And I've

looked at the question he was asked when he completed the application and agree he failed to take reasonable care. This is because he was asked if the car had been modified and he was given examples of what this might mean.. And I think this was a clear question asked by Watford through the comparison site Mr C used. Mr C said the car hadn't been modified.

I can see that Watford's engineer found that Mr C's car had darkened rear light clusters and dark tinted rear windows. Mr C thought the tinted windows were standard for his car's model. But Watford's engineer has confirmed that Mr C's car didn't have tinted windows as part of the model's specification. He said the rear windows on Mr C's car had after-market dark tinting. So I'm satisfied that the car had modifications made after-market.

Mr C said he bought the car as it was sold, and he wasn't aware that it had been modified. But I think, from the file, that Mr C was aware that the rear light clusters had been darkened. And I think he should reasonably have been aware that the dark tinted rear windows wouldn't be standard. Or, if he was unsure, he could have checked with Watford. And I think this means Mr C failed to take reasonable care not to make a misrepresentation when he said his car had no modifications.

Watford has provided evidence from its underwriting guide to show that it wouldn't have offered cover if Mr C had answered the question about modifications correctly. This means I am satisfied Mr C's misrepresentation was a qualifying one under CIDRA. And I think Mr C's misrepresentation was careless because I've not seen evidence that it was deliberate or reckless.

But Watford didn't choose the remedy available to it under CIDRA on this occasion, that is, to avoid the policy. Instead, it decided to cancel it. I can see that in Mr C's policy booklet, on page 32 under Cancellations, Watford explains that it may cancel the policy:

"Where You have carelessly misrepresented relevant information which, if correctly represented at the time of application, would have caused Us to decline Your application for cover."

And so as Mr C misrepresented the modifications, I think Watford was entitled by the policy terms and conditions to cancel the policy.

Watford's decision to cancel rather than avoid Mr C's policy was an advantage for Mr C as he doesn't have to declare the avoidance, though he must declare the cancellation if asked by future insurers.

But it's also a major benefit for Mr C in that Watford still has to deal with the claim. This is because avoidance annuls the policy back to the start as if it never existed and so there is no cover in place for the claim. Whereas cancellation ends the policy from the moment it is applied and not retrospectively. And so any claim that pre-dates cancellation falls to be dealt with by Watford. So I think Watford has unfairly decided not to indemnify Mr C for the claim because of the undisclosed modifications.

Mr C said he was still paying his monthly premium. I think the policy is an annual contract although Mr C may be paying for it by monthly instalments. And, as the policy has been used, I think Mr C needs to pay his premiums for the year. Mr C said Watford was asking for an incorrect amount. But I can't consider that here as Mr C needs to firstly raise this with Watford to give it a chance to respond.

Putting things right

I require Watford Insurance Company Europe Limited to consider Mr C's claim under the remaining terms and conditions of his policy.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 May 2022.

Phillip Berechree
Ombudsman