DRN-3440672

The complaint

Ms L, represented by her son Mr C – who is also a named driver on Ms L's policy – has complained about her motor insurer Watford Insurance Company Europe Limited because, having settled her claim, along with that of another driver, it decided she had misrepresented herself to it when the policy was arranged. So Watford demanded Ms L pay it £25,523.05, being its outlay for her and the other driver's claim, including £17,000 of hire car charges for the other driver.

Whilst Mr C has represented his mother, for ease I'll refer to her having made the complaint and spoken to us. But sometimes I may refer to Mr C, where appropriate, particularly if I need to mention him as the named driver.

What happened

Ms L arranged cover with Watford in late December 2018. She told it she owned the car in question and was its registered keeper. The policy only existed for that year, it didn't renew in December 2019.

Mr C was driving the car in early December 2019, prior to the policy ending, when he collided with the car in front of him on a roundabout. A claim was made to Watford which it accepted. It also advised the other driver's insurer that it was accepting liability for the incident. In January 2020 Watford paid Ms L's nominated garage £4,423.56 in full settlement of the repair cost for her car. With Ms L paying the garage £1,025 as the policy excess amount she was liable for. And in April 2020 Watford settled with the other driver's insurer for that car. The other car had been deemed a category S total loss. Which meant it had suffered structural damage the insurer had chosen to not repair. Watford paid £5,434 to the other insurer being the market value for the vehicle (£8,360), less the cost of its salvage (£2,926) which the other insurer would gain from scrapping it.

But the other driver had incurred hire costs too (for driving another car whilst the claim was being considered). And Watford received notification of some passengers allegedly being injured in the incident. Watford though didn't think the hire costs claimed were reasonable, or that passengers had likely been injured. The injury claims were seemingly later dropped, at least Watford didn't pay anything for them. But during its investigation into the injury claims, in late July 2020, it spoke to Mr C. Mr C told it that his brother, not Ms L, owned the car and was its registered keeper. Watford then asked Ms L to provide it with a copy of the registration documents as well as proof of purchase for the car. Ms L provided these and told Watford that:

"…my Son, he bought the vehicle for me as a gift, however, he has not changed the name yet, this is because we all still live in the same household and he has not finished paying off the finance, therefore we did not see any point of changing the V5 documents".

Around this time Watford was seeking, via the courts, to gain further information from the other insurer in respect of the hire costs claimed. And in January 2021, with that issue still in dispute, Watford wrote to Ms L and told her it was refusing liability for her and the other

driver's claim. Ms L complained about that and Watford continued challenging the other driver's hire costs.

In March 2021 Watford issued a final response to Ms L on its claim refusal. It said she had given it incorrect information when the policy was arranged. And if she had told it her son was the registered keeper and owner, not her, it wouldn't have offered her cover. So it felt it had acted reasonably to refuse to provide the cover offered by the policy – because she should never have had that policy.

In April 2021, in respect of the other driver's hire costs, Watford said all it would pay was £5,673. It said there was no justification for more than this to be paid. The other party wouldn't accept that but over several months Watford maintained that position – it explained this was based on a maximum of 42 days hire having been needed (had delays not been caused) and a basic hire rate. It noted that despite the court action taken in respect of disclosure of costs, no proof of outlay had been shown, which was why it was offering settlement at a basic rate. This position and offer was affirmed in a final communication with those acting for the other driver on 29 July 2021. But on 20 August 2021, seemingly following a large inter-business agreement Watford had reached with the hire car provider, Watford settled the other driver's hire car costs at £17,064.

Having settled the claims, Watford reviewed its outlay. In September 2021 it wrote to Ms L. It said that as noted in its previous letter, it hadn't been able to provide cover for the incident, because she had breached the terms of her policy. It said, before off-setting the premium for the policy (£1,398.51), it had spent a total of £26,921.56 settling her and the other driver's claim. Watford told Ms L it now expected her to reimburse it £25,523.05 (£26,921.05 less the £1,398.51 premium). Ms L was unhappy and complained to us.

Ms L told us that when she had arranged the policy she simply had not known she was not the registered keeper. And, as she had been given the car as a gift, she believed she was its owner. She said she had only discovered otherwise during Watford's investigations, and the fact she was the mother of the owner and keeper surely couldn't make any difference to Watford. She felt Watford's refusal had come very late in the day given it had settled the damage claims in 2020, and she wasn't persuaded that the costs it had settled at were fair – particularly the £17,000 for hire costs.

Our investigator took the view that Ms L had likely given Watford incorrect information when the policy had been arranged. So she didn't think Watford had done anything wrong.

Ms L said she had never deliberately misled Watford. And that she didn't think her concerns about the sum Watford was asking her to pay it had been addressed. Her complaint was passed for an ombudsman's consideration.

I felt that the complaint should be upheld in part – that whilst Watford had mostly acted reasonably, the amount it was asking Ms L to repay was unfair. So I issued a provisional decision, the findings of which were:

"misrepresentation and the claim

I've considered what Ms L has told us, but also what she told Watford as quoted above. I'm minded to think that what she told Watford provides the most likely summary of what Ms L knew. And I don't think, from the way her comment to Watford was phrased, that she had only just become aware that her son was still the owner/registered keeper. I think if this had all just come to her attention she'd have said so at that first point of questioning by Watford, rather than saying "we didn't see any point in changing the V5 documents". And I think it's reasonable to conclude that if, as I think she did, Ms L saw no need to change them, she

likely felt no need to say to Watford, when arranging the cover, that she wasn't the owner and registered keeper.

I say that by tracking Ms L's own logic – she'd been given a gift, and they all lived in the same house and it was a car that only she and her other son used. So Ms L clearly felt like the car's owner. And I think the registered keeper detail, for her, was just an unimportant technicality. I don't think Ms L had any intent to mislead Watford – but she made a mistake in not telling it her son was the owner and registered keeper. He was still the owner because he was still paying the finance on the car and, therefore, couldn't pass ownership of it to her. And he was the registered keeper of it because that was what was recorded on the V5. If Ms L had told Watford that, it wouldn't have offered her cover, and it wouldn't have been in the position of having to handle the claims made to it when Mr C had the accident whilst driving the car. If Ms L's policy with Watford had still been active when it found out about the misrepresentation it would likely have avoided Ms L's policy, treated it as though it had never existed. And, from what I've seen, I'd likely have found it fair and reasonable for it to have done so.

There is legislation which sets out the rights and obligations of both parties when arranging cover. And the prospective policyholder must take reasonable care not to misrepresent themselves to the insurer. If they do, and the insurer wouldn't have offered cover but for the misrepresented information, the insurer can treat the policy as though it hadn't existed. This is called avoidance. And one of the consequences of the avoidance is that the insurer's liability for the claim falls away – because the cover was, to all intents and purposes, never in place.

I know Ms L can't see why her son being the owner and registered keeper would make a difference to Watford. But I have seen Watford's criteria against which it assesses policy applications. And I'm satisfied that if Ms L had said the car belonged to her son, and/or that he was its registered keeper, Watford wouldn't have offered Ms L cover. Here, Watford hasn't chosen to avoid the policy, likely I think because it had already lapsed (although this wouldn't have prevented it from taking that action). The fact Watford hasn't avoided the policy is to Ms L's advantage, as having an avoidance on your record will make getting cover more difficult. However, it also, strictly speaking, means that Ms L was covered by Watford's policy at the time of the accident. In the circumstances though, I can't say it would be a fair outcome for Watford to have to honour the claim. Because its policy was only in place for Ms L to potentially benefit from because of her mistake when arranging it. So I don't intend to make Watford review its claim decision.

timing

I know Ms L thinks that Watford also shouldn't be allowed to decline the claim because it took too long to realise it should never have offered cover to her. I agree with Ms L that Watford's decision did come late. But I don't think that was because of any fault or delay by it – I don't think it should reasonably have found out about this earlier.

When a policy is arranged, because of the legislation mentioned above, an insurer is entitled to accept that the information given in the application is correct. And until the ownership and keeper issue came to light during the interview with Mr C, Watford hadn't been given any cause to suspect Ms L might have misrepresented things. Once it found out, I think it acted responsibly, including in a timely manner to consider the situation and make a decision. I'm not minded to make Watford review its claims position based on when the misrepresentation was discovered.

costs

On this, I think Watford acted unfairly and unreasonably. And I don't intend to allow Watford to continue chasing Ms L for reimbursement based on its entire outlay. I say that as I don't think the entire £26,921.56 was reasonably incurred. I'll explain below and if my final decision remains the same and Ms L accepts it, Watford will only be able to ask Ms L to pay it £14,132.05.

Watford incurred costs totalling £9,857.56 for car repairs; Ms L's and the other driver's. I've no issue with those costs. The portion for Ms L's car was based on an estimate from her garage and an engineer assessed the other car determining it was a total loss. The settlement for that car was based on its market value less its salvage cost. I don't think there was anything for Watford to reasonably challenge about that. So I think it can fairly ask Ms L to pay this sum back to it – after all it would never have paid these sums out if Ms L had given it the correct information when the policy was applied for.

The remaining £17,064 of Watford's outlay was for hire costs. But I don't think that Watford settling for that sum was fair or reasonable. Watford had spent many months challenging this part of the other driver's claim. It had even taken court action to try and force the other party to disclose cost details. Several times, starting in the spring of 2021, Watford very clearly told the other party that the most it would pay for hire costs was £5,673. It set out reasoning for that sum, explaining there was no justification – it could see – for more than this to be paid. I can't see any fair way Watford can come back from that and reasonably require Ms L to cover the sum of £17,064 it belatedly chose to pay the hire company. So I think it unreasonably incurred costs of £11,391 in this respect – £5,673 plus £11,391 totalling £17,064. As such, the only sum I think it can fairly and reasonably ask Ms L to reimburse it, for the other party's hire costs is £5,673.

The figure of £5,673, Watford has explained, is based on a basic hire rate for 42 days, not at the higher rate for the 84 days claimed for. I think that's reasonable. Which is why I'm prepared to say, in light of the misrepresentation made by Ms L, that Watford is entitled to ask her to reimburse it.

So the car repair cost of £9,857.56, plus the hire cost of £5,673 gives a total of £15,530.56 as Watford's reasonably incurred outlay for this incident. And there's Ms L's premium of £1,398.51 to take into account. Deducting that gives a sum of £14,132.05. This is all I think Watford can fairly and reasonably ask Ms L to reimburse.

That effectively results in me intending to require Watford to write-off £11,391 of the debt it has, to date, been asking Ms L to pay. It should amend its records straightaway to reflect the correct sum I'm satisfied it can fairly and reasonably ask Ms L to pay – £14,132.05. It should confirm to her in writing that this is all she owes."

Watford said it would accept my decision. Ms L asked that my findings were reviewed. To that end she said:

- The other driver's claim was dubious in a number of ways.
- The other car shouldn't have been declared a total loss – her car had more damage but was ok. Photos taken at the scene show no structural damage to the other car, which was driven away.
- The claim shouldn't have taken 42 days – she wants to see receipts and the like for the hire costs.
- I should demand further evidence in these respects as the total value put forward of £14,132.05, without sufficient evidence in support of the values that make up that sum, is still unfair.

- Regarding my quote of what she had said to Watford – this was said in response to its request for the registered keeper documents, in order to explain their content whilst avoiding needing to change them first, which might cause a delay.

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 understand that Ms L has concerns about the other driver's claim. And to some extent so did Watford. As I explained provisionally it challenged certain aspects of the claim – the injury to passengers and the total claimed for hire costs. Even going to the extent of taking court proceedings against the other insurer to try and verify the costs put forward. So I don't think I can conclude that Watford has just accepted the claim without properly considering it.

It is sometimes the case that a car can seem perfectly fine after an accident. And can even be driven. But when a garage or engineer looks at it, further damage can be seen. And I have to bear in mind that an engineer is an expert in assessing damage, Ms L and Mr C (who was present at the accident) are not. And the other insurer did have an engineer assess the car before deciding to write that off as a total loss and settle the other driver's claim. Watford, as Mr C had been at fault for the accident, had to decide whether to settle or challenge that position. I remain of the view that, with an engineer's report showing the damage and repair costs and its consequent total loss status, it would be very difficult for Watford to successfully challenge the other insurer on the conclusions they reached.

Watford felt a hire period of 42 days was fair, rather than the original 84 days the other driver's insurers claimed. I did look at that when I made my provisional decision. The incident occurred on the 2 December 2019, with hire starting on 4 December 2019. And following some details being received by the other insurer in February 2020, whilst the other driver's claim was still on-going and unsettled, Watford felt the claim had been unreasonably delayed. It was on this basis that it felt the 84 days worth of car hire charges which were later claimed for, were unreasonable. It felt 42 days was a fair period for the claim to have been resolved and a hire car to have been needed. I consider a loss like this can take a few weeks for an insurer to progress, and I bear in mind that losses which occur during holiday periods can progress more slowly. All things considered I'm not persuaded the other claim could or should reasonably have been settled before Christmas 2019. So Watford's assessment of 42 days – taking the claim resolution and hire period to 14 January 2020 – is, in my view, reasonable and therefore fair.

I can assure Ms L that I have seen sufficient evidence to satisfy me that Watford acted fairly and reasonably in settling for the total loss of the other car and for saying 42 days was a fair and reasonable period for hire. So I'm not going to ask for further evidence. With regret for any disappointment this causes Ms L, I've seen enough and whilst I've taken her response on board it hasn't changed my mind on these aspects of her complaint.

I've also considered what Ms L has said about her response to Watford's enquires (quoted by me provisionally). I'm not persuaded by that explanation. I think if Ms L had just found out that her son was the registered keep and she was explaining to Watford why the documents she was sending it were in his name – she'd have said just that. For example, '*I've just realised they're in my son's name – I'll send them as they are, but they need changing'*. Maybe that is what Ms L meant to say, or maybe she thought that was conveyed by what she said. But I have to make a decision about what I think is most likely the case. And I think its most likely that Ms L did know she was not 'officially' the owner and/or registered keeper of the car, but in her and her family's eyes, to all intents and purposes, she was. And she thought that was enough to tell Watford the same when the policy was arranged. I think she

made a mistake and, unfortunately, in the circumstances that has left her and Watford in a position where it has paid money out where, but for her mistake, it otherwise wouldn't have done so.

I remain of the view as stated provisionally – it is fair and reasonable for Watford to ask Ms L to repay its fair and reasonable outlay for her and the other driver's claim. And I also remain of the view that the fair and reasonable sum it can ask her to pay is £14,132.05. As such, my provisional findings, along with my comments here, now form the findings of this, my final decision.

Putting things right

I require Watford to write-off part of the debt it has been chasing Ms L for – amending its own records to show, and confirming to Ms L in writing, that she only owes it £14,132.05.

My final decision

I uphold this complaint. I require Watford Insurance Company Europe Limited to provide the redress set out above at "*putting things right*".

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 27 May 2022.
Fiona Robinson
Ombudsman