

The complaint

Miss M complains that when she made a claim Watford Insurance Company Europe Limited cancelled her policy, as they said she'd provided incorrect information when taking out her cover. And they're now seeking to recover their outlay from her.

What happened

Miss M took out a motor insurance policy with Watford in March 2020. The policy was originally taken out online and cover was provided on the basis of the information Miss M gave. Her policy was renewed using the same information in March 2021 and March 2022.

In October 2022 Miss M was involved in an accident and submitted a claim to Watford. As part of their investigation Watford checked the details of the vehicle insured under Miss M's policy and discovered that her mother was the owner and registered keeper of the vehicle. And the vehicle had been purchased on a finance agreement which was also in her mother's name.

So in December 2022 Watford advised Miss M that they were cancelling her policy and wouldn't be providing an indemnity in respect of her claim. They said if she'd told them she wasn't the owner or registered keeper of the vehicle they'd wouldn't have offered her cover.

They also said that when she'd taken out and renewed her policy she'd made a qualifying misrepresentation under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), which they considered to be reckless. So they wouldn't be refunding her premiums and they'd be looking to recover any payments they were required to make in relation to the accident from her.

Miss M contacted our service in February 2024 as she'd received a letter from solicitors instructed by Watford, seeking to recover the money paid out in settlement of the claim made by the owner of the vehicle she'd hit. She told us she hadn't provided incorrect information when taking out her policy and didn't understand why her policy had been cancelled.

We contacted Watford who advised us Miss M hadn't raised a complaint with them, which she needed to do before referring her complaint to our service.

Watford issued their final response letter (FRL) to Miss M on 22 February 2024. They didn't uphold her complaint. They said when she'd initially taken out her policy online she'd been asked "*Who is the registered keeper?*" And she'd have seen a help box telling her to check the logbook if she wasn't sure and saying the registered keeper might not be the same as the legal owner. In answer to this question, from a drop-down list, Miss M had selected "*You.*"

Watford said Miss M was next asked, "*Who is the legal owner?*" And from a further drop-down list she again selected "*You.*"

The information Miss M gave was acceptable to Watford and they say her broker sent her

the policy documentation. This included her Proposal Form which confirmed the information she'd provided, upon which the sale of the policy was based. And she was asked to check this carefully and contact them if anything was incorrect. When the policy was renewed in 2021 and 2022 Watford say Miss M was again asked to check her policy documents were correct.

Watford went on to say that Miss M had misrepresented that she was the owner and registered keeper of the vehicle, and had she told them this was her mother, they wouldn't have agreed to provide cover. So they'd correctly declined her claim and cancelled her policy.

Unhappy with Watford's response Miss M complained to our service.

Our investigator considered the case but didn't uphold the complaint. He was satisfied that Watford wouldn't have provided cover if Miss M had told them that her mother was the owner and registered keeper of the vehicle. So he said they'd cancelled her policy in line with the provisions of CIDRA, which is what we'd have expected them to do.

In his opinion our investigator commented that he felt Miss M's misrepresentation was careless rather than reckless.

In response to our investigator's opinion Miss M told us that there were questions Watford hadn't answered, as they'd wrongly recorded her date of birth and how long she'd lived in the UK on her policy. Our investigator responded to this saying he couldn't consider these issues as they weren't addressed in Watford's FRL, so she'd need to raise a further complaint with them.

The case has now come to me for a 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.

When a consumer applies for insurance they're required to answer the questions they're asked with reasonable care. And an insurer is required to ask clear questions.

When Miss M took out her policy with Watford she was asked whether she was the owner and registered keeper of the vehicle she was insuring. I think that both these questions are clear, and Miss M would have seen further information that the registered keeper might not be the same as the legal owner of the vehicle. Yet despite knowing her mother was the owner and registered keeper of the vehicle, and had purchased the vehicle on finance, Miss M answer 'You' to both the questions she was asked.

So I'm satisfied that Miss M didn't answer the questions she was asked with reasonable care.

Watford have provided evidence to show that had Miss M answered 'No' to either, or both, of these questions then they wouldn't have provided her with cover. So I'm also satisfied that she made a 'qualifying misrepresentation' under CIDRA.

The remedies available to Watford under CIDRA depend on whether the misrepresentation was deliberate or reckless, or careless. Watford have treated the misrepresentation as deliberate or reckless and it's for them to show that this is correct, CIDRA s 5 (4).

CIDRA s 5 (2) states a qualifying misrepresentation is deliberate or reckless if the consumer

- (a) Knew it was untrue or misleading, or did not care whether or not it was untrue or misleading, and
- (b) Knew that the matter to which the misrepresentation was relevant to the insurer, or did not care whether or not it was relevant to the insurer.

and

CIDRA s 5 (5) states but it is to be presumed, unless the contrary is shown –

- (a) That the consumer had the knowledge of a reasonable consumer, and
- (b) That the consumer knew that a matter about which the insurer asked a clear and specific question was relevant to the insurer.

In this case Miss M was answering questions about a vehicle owned by and registered to her mother. So I can't see how when she said she was the owner and registered keeper this can have been anything other than deliberate or reckless as defined by CIDRA. And I'm satisfied that she should have known the information was relevant to Watford, as this was part of the information they'd consider when assessing the risk of providing her with insurance cover.

Where there's been a deliberate or reckless misrepresentation CIDRA states that, the insurer –

- (a) May avoid the contract and avoid all claims, and
- (b) Need not return any of the premiums paid, except to the extent (if any) that it would be unfair to the consumer to retain them.

This is the action Watford took and they advised Miss M of this in their letter of 7 December 2022.

While our investigator didn't uphold Miss M's complaint he said in his opinion that he considered the misrepresentation to be careless rather than reckless. For the reasons set out above I disagree with this comment. Had the misrepresentation been careless there would have been different remedies available to Watford. But as I agree with Watford I don't need to consider these here.

Miss M contacted our service as she'd heard from solicitors instructed by Watford seeking to recover the sums they'd paid to settle the claim of the owner of the parked car she collided with. I understand that she has found this very stressful and I'm sorry to hear of the impact this has had on her health. But as her policy was cancelled by Watford she was essentially uninsured at the time of the accident. In these circumstances Watford were required to deal with the other driver's claim and they can seek to recover their outlay from Miss M.

As I'm persuaded that Watford dealt with this case correctly in line with the provisions of CIDRA, I don't require them to take any action.

My final decision

For the reasons set out above my final decision is that I don't uphold Miss M's complaint about Watford Insurance Company Europe Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 19 September 2024.

Patricia O'Leary
Ombudsman