

## **The complaint**

Mr B has complained that Watford Insurance Company Europe Limited cancelled his motor insurance policy and refused to pay his claim.

## **What happened**

Mr B took out a motor insurance policy with Watford through an online price comparison site. When his car was involved in an accident, he tried to claim on his policy.

Watford declined his claim, cancelled his policy and kept the premiums he'd already paid. When Mr B complained it said he'd answered the question he'd been asked about the car's owner and registered keeper incorrectly. And that it considered this to be a deliberate or reckless qualifying misrepresentation. It said Mr B had no insurable interest in the car which entitled it to cancel his policy, refuse his claim and retain his premiums.

Mr B brought his complaint to us and our investigator thought it should be upheld. He thought The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA) applied in this case. He agreed there had been a qualifying misrepresentation. But he didn't think this was deliberate or reckless. He believed it was careless. So he thought Watford was fairly entitled to avoid the policy (treat it as if it never existed) and decline the claim. But he said Watford should refund Mr B's premiums.

Watford doesn't agree with the investigator and has asked for an ombudsman's review, so the complaint has come to me for a final decision. It said it hadn't avoided the policy but cancelled it. It said Mr B didn't have any insurable interest in the car. It said it would backdate the cancellation to the date of the accident. And it would give Mr B a pro rata refund of his premium from that date. Mr B said he agreed with the investigator's view.

## **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 told Mr B that he had misrepresented who the car's owner and registered keeper was. It said his mother's name was on the V5 registration document and she was paying the finance. But Mr B had said when asked that he was the car's owner and keeper.

So I think 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 thought Mr B failed to take reasonable care not to make a misrepresentation when he stated in his application via a comparison site that he was the car's owner and registered keeper.

I've looked at the question Mr B was asked when he completed the application and agree he failed to take reasonable care. This is because he was asked "Are you the owner and registered keeper of the car (or will you be)?" A pop up advised that if his name was on the V5, then he was the registered keeper. And I think this was a clear question asked by Watford through the comparison site Mr B used.

Mr B said he was the car's owner and registered keeper. He's explained that this was because he'd been given the car as a birthday present and was paying for the insurance himself. He's provided evidence of this.

But Mr B's mother's name was on the car's V5 document and the finance agreement for the car was in her name. Mr B was also sent the proposal form for him to check and tell Watford of any errors. This had Mr B as the car's owner and registered keeper. But Mr B didn't then correct this. And so I think this means Mr B failed to take reasonable care not to make a misrepresentation when he said he was the car's owner and registered keeper.

Watford has provided evidence which shows that if Mr B had not made this misrepresentation it wouldn't have provided cover. This means I am satisfied Mr B's misrepresentation was a qualifying one under CIDRA.

Watford thought Mr B's misrepresentation was a reckless or deliberate misrepresentation. But I disagree. Under CIDRA, consumers are only required to answer questions to the best of the knowledge or belief. I'm satisfied that Mr B thought he was the car's owner because he'd been given it as a present and he was paying for the insurance. Mr B was a young, inexperienced driver and I can't see that he understood what the V5 meant.

Watford thought that Mr B had deliberately not changed over the V5 to his name in order to retain the car's value. So it thought he must have known that he'd answered the question incorrectly. But Mr B offered this suggestion after Watford had made its decision. So I don't think it would be fair to rely on it to show that Mr B had made a deliberate misrepresentation. So I think Mr B's misrepresentation was careless.

Therefore, I'm satisfied Watford was entitled to avoid Mr B's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, Watford does not have to deal with his claim following the loss of his car. But, under CIDRA, it must return Mr B's premiums in full.

And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Watford to rely on it to avoid Mr B's policy produces the fair and reasonable outcome in this complaint.

### **Putting things right**

As I think Mr B's misrepresentation was careless, rather than deliberate or reckless, I require Watford to comply with CIDRA and refund Mr B's premiums in full.

### **My final decision**

For the reasons set out above, my final decision is that I uphold Mr B's complaint in part. 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 B to accept or reject my decision before 18 January 2021.

Phillip Berechree  
**Ombudsman**