

The complaint

Mr A's representative complains on his behalf that Watford Insurance Company Europe Limited (Watford Insurance) unfairly cancelled his motor insurance policy and refused to pay his claim.

References to Mr A or his representative, will include the other.

There are several parties and representatives of Watford Insurance involved throughout the claim but for the purposes of this complaint I'm only going to refer to Watford Insurance.

What happened

Mr A took out a motor insurance policy with Watford Insurance through a price comparison site. This was an on-line application. A phone call was by Mr A to make payment for the policy as this was not possible on-line.

Mr A's car was stolen in November 2020 and he made a claim on his motor insurance policy. The car was recovered and Watford Insurance's specialist deemed the car a total loss.

When Watford Insurance looked into his claim it found Mr A had not disclosed three previous claims and one policy previously voided. It said it would not have offered a policy to him if he had disclosed this information when obtaining a quote.

Watford Insurance said it considered this to be a deliberate qualifying misrepresentation, which it said entitled it to cancel his policy, decline his claim and keep the premium he'd already paid without any refund.

Mr A brought his complaint to us and our investigator thought it should be upheld. They said Watford Insurance were entitled to avoid his policy and retain the premium he'd paid due to a deliberate misrepresentation. But as Watford Insurance had decided to cancel the policy after the claim and incident occurred, that it should consider the claim and pay the market value of the car to Mr A.

As Watford Insurance is unhappy with our investigator's view that it should pay the claim, the complaint has been brought to me for a final decision to be made.

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.

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

In this case Watford Insurance did not follow CIDRA, it did find a deliberate misrepresentation but did not avoid the policy. Instead it *cancelled* Mr A's policy from 3 February 2021, declined his claim and did not refund premiums paid. Mr A was informed of this by way of a seven-day notice of cancellation letter on 27 January 2021.

Cancellation of a policy for misrepresentation is not in accordance with CIDRA.

Watford Insurance said it understood it can avoid the policy, but it said; *"it is now difficult for an insurer to avoid a policy and no longer a case of the insurer simply being able to declare the policy void."* It added; *"while it is correct to say that the Underwriter could have voided the policy due to the unacceptable non-disclosure, this has not been done. The policy has been cancelled"*.

Watford Insurance say; *"the outcome for Mr A has been exactly the same; the claim not being paid, and no refund of premium being given."*

I think Watford Insurance should have followed CIDRA. I do not think the outcome for a cancelled policy is the same as for avoiding a policy. An avoided policy has no existence and so there was no cover under which to consider a claim, whereas a policy cannot be cancelled respectively and so any claim pre-dating cancellation must be considered.

As Watford Insurance didn't follow CIDRA and cancelled Mr A's policy from 3 February 2021, this means there was a policy in place at the time Mr A made a claim after his car was stolen. By confirming the policy was in place at the time of Mr A's claim, Watford Insurance should treat Mr A's claim accordingly.

In this case I agree with our investigator. I think the fair and reasonable outcome is that Watford Insurance must consider the claim and settle the market value of the vehicle to Mr A.

My final decision

For the reasons set out above, I've decided to uphold Mr A's complaint.

I require Watford Insurance Company Europe Limited to accept Mr A's claim and settle the claim to the market value of the car, less any excess and charges due.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 17 June 2022.

Sally-Ann Harding
Ombudsman