

The complaint

Mr D has complained about Watford Insurance Europe Company Limited's decision to cancel his car insurance policy for failing to pay an additional premium. Watford says Mr D didn't tell it the correct value for his car when he bought the policy.

All reference to the insurer Watford includes its agents.

What happened

In March 2021 Mr D bought the policy through a broker acting on his behalf. Mr D said the value of his car was £14,380. When he called to report an incident in August 2021, he was asked what the value of his car was and he said around £18,000.

The insurer Watford carried out a valuation check for Mr D's car using one of the main motor trade guides. The valuation was for £19,329. Watford told the broker that Mr D owed an additional premium due to the valuation he gave for his car when he bought it.

The broker contacted Mr D to inform him of the additional premium he owed to Watford. As it didn't hear from him, it sent Mr D a seven day cancellation notice. Mr D's policy was cancelled a week later on 4 September 2021 due to the additional premium not being paid.

After the policy was cancelled, Mr D said he subsequently paid the additional premium he owed. But he complained about the cancellation of his policy and the way his claim had been handled. He said he made several calls and wasn't able to get a clear reply as to why his policy was cancelled. He said he didn't receive any letters or calls to tell him he owed an additional premium. Mr D said he discovered an email on a Friday confirming his policy would cancel on the Monday – he didn't think it fair he was given only three days' notice.

Watford said it had correctly carried out the cancellation in line with the process set out under the policy. It said any issues Mr D experienced with calls he had with the broker about the cancellation process and about his claim were separate.

In October 2021 Mr D asked us to look at his complaint. He said the repairs were estimated at £5,000. He said he decided to carry out minimum repairs and sell the car. He provided invoice proof of the amount he paid for the car when he bought it in February 2020, just over a year before he bought the policy. He paid £16,500 for it from a dealership garage. He received funds for £15,500 in October 2021 when he sold the car, just over a month after the policy was cancelled by Watford.

Mr D said he couldn't exactly remember why he valued the car at £18,000 in the call, but he thought it was because he'd looked online at a similar car for sale. He said he estimated the value of his car at £14,380 in March 2020 as it had done a significant number of miles since he'd bought it the year before.

Our Investigator explained to both parties that Mr D could raise a separate complaint against the broker for the poor service he says he received.

Our Investigator thought it was unfair for Watford to have relied on the valuation Mr D gave when he reported the incident – she thought it should have been clearer and better communicated to Mr D about the valuation of his car before cancelling his policy.

The Investigator recommended Watford take the following action to put things right:

- Pay Mr D the difference between the market valuation it obtained of £19,239 and the sale price of £15,500 for the car with interest.
- Pay Mr D £400 compensation for the distress and inconvenience it caused as Mr D was significantly out of pocket due to Watford's actions in cancelling the policy and not meeting Mr D's claim.

Mr D acknowledged the Investigator's findings and recommendations. Watford didn't agree. In summary it says:

- if Watford is expected to settle the claim by paying a settlement amount, the additional premium and premium for the policy year would be correctly due as the policy would have been used. The additional premium was rightly due for the correct value of the car.
- It advised Mr D that once the additional premium was paid, the claim could be dealt with. Mr D chose not to pursue his claim for repairs.
- As Mr D chose not to pursue his claim, the recommended compensation award of £400 isn't fair as it was Mr D's decision to be out of pocket by not claiming.

I issued a provisional decision on 6 April 2022. I thought Watford should have considered the relevant law: The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) which I think applies in this case - as Watford says Mr D misrepresented the value of his car when he bought the policy.

Having considered CIDRA, I didn't think Mr D had made a qualifying misrepresentation when providing an estimated value for his car. I thought Watford had provided a 'market value' policy and not an agreed value policy. Therefore I didn't think it fair or reasonable for Watford to rely on the estimated value being wrong as a reason to charge Mr D an additional premium which led to the cancellation of his policy. I said that even if Mr D had made a qualifying misrepresentation – I didn't think Watford had acted reasonably as it should have dealt with the claim on a proportionate basis rather than insisting Mr D pay an additional premium which led to his policy being cancelled.

I hadn't seen the question Mr D was asked about the value of his vehicle when he applied for the policy. I'd seen the estimated value set out under the policy schedule. I said I would reconsider this point if Watford provided further details.

I found that Watford hadn't replied to Mr D's complaint about the way the claim was handled.

In response to my provisional decision, Watford said that the claim complaint had been dealt with separately by the claims handling agent and broker.

Watford doesn't agree it's fair for Mr D to receive a full claim amount when he didn't pay a full premium for the correct value of his car. And as Mr D chose not to claim for repairs – and it was his decision not to pay the higher amount which led to the cancellation of the policy - it doesn't agree it should pay interest on a settlement sum or that the recommended compensation of £400 is fair. Watford says Mr D has paid 94% of the premium he should

have paid and therefore if the ombudsman upholds the complaint, Watford should pay no more than 94% of the total loss settlement sum as a pro rata settlement.

Watford said it charged Mr D a lower premium based on the estimated value he gave when he bought the policy. However it says it is a market value policy and not an agreed value policy. Watford has provided underwriting information to show the rate it applies to the premium depending on the valuation a consumer gives for their car when they apply for a policy.

Watford doesn't consider it reasonable for it to deal with Mr D's claim based on the premium he paid – as he didn't want to pay the higher premium.

Mr D accepted my provisional decision. As Watford didn't agree, the case has been passed back to me to decide.

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.

Within our inquisitorial remit, I've considered whether Watford's decision to charge Mr D an additional premium – which led to the cancellation of his policy and his complaint – was reasonable.

I've looked at Watford's policy wording, the proposal form and the policy schedule. This isn't an 'agreed value' policy. Agreed Value policies are specialist insurance policies where the insurer sets the premium in return for providing cover up to an agreed value for a vehicle. In response to my provisional decision, Watford agrees with this – but says it does charge a premium depending on the estimated value a consumer gives.

The value Mr D provided on the schedule is written as an 'estimated value'. We looked at the main motor trade guides which provided market valuations for Mr D's car ranging between £15,395 to £18,660 – a variation of almost £3,000.

Under the policy wording, there is no reference to Watford's requirement for Mr D to provide a valuation for the vehicle. I haven't seen the question Mr D was asked about the value of his vehicle when he applied for the policy. Watford hasn't provided further information in response to my provisional decision.

As with most motor insurance policies I've seen (that aren't agreed value policies) Watford provides a definition of the 'market value' which is the most it will pay in the event of a claim. In other words, the market value for a vehicle is the most an insurer will indemnify a customer for.

Watford's definition of 'market value' is:

"The retail Market Value based on that listed in the current Glasses Guide for purchasing, or replacing, the insured vehicle with one of the same make, model, age, trim level, recorded mileage and being in a similar condition. Glasses Guide is a motor trade publication recognised and used extensively throughout the motor vehicle industry to value new/used vehicles. Where Glasses Guide is not available or there is a dispute over valuation with Your insurer, We will consider alternative equivalent motor trade publications such as CAP (CAP Motor Research Ltd) or Parkers Guide."

I haven't seen anything to say that Watford will base the premium a customer pays on an estimated value for their car instead of the market value of it. We asked Watford if it carried out any valuation checks when Mr D bought the policy. It said it didn't.

Watford hasn't said that it considered the relevant law which I think applies in this case - as it says Mr D misrepresented the value of his car when he bought the policy.

The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) 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. If a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation.

An example of the actions an insurer can take where it would have otherwise charged a higher premium is to pay a proportionately reduced claim settlement. CIDRA does not give insurers the right to charge an additional premium. So we don't think it's fair for an insurer to impose an additional premium on a consumer. That means it would be unfair for an insurer to force or pressurise a customer to pay it. And it would be unfair for the insurer to take the money directly from the consumer's bank account without their prior agreement.

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.

So as a starting point, an insurer needs to show that a qualifying misrepresentation took place.

In this case, I don't think Watford has shown that a qualifying misrepresentation took place when Mr D provided an estimated value for his car. So I don't think it matters what valuation estimate Mr D gave when he called to report the incident.

In this case, Watford decided that Mr D's valuation of his car was wrong when he applied for the policy. But it didn't carry out any checks – and hasn't provided information to show how it explained the importance of providing an estimated value – when Mr D applied for the policy. I don't know how Watford can conclude that Mr D provided an incorrect valuation for his car. The valuation of his car when Mr D claimed wasn't the same valuation as when he bought the policy in any event - as this is a market value policy. Watford doesn't appear to have applied the increase in premium based on the valuation of his car when Mr D bought the policy - but when he claimed. This is clearly an unfair term to apply.

So in line with my provisional decision, I don't think it was fair or reasonable for Watford to request an additional premium from Mr D – and to cancel his policy because he failed to pay it. Even if Mr D had made a qualifying misrepresentation – and I don't think he did – Watford didn't give Mr D the option to either pay the additional premium or settle the claim and any future claims under the policy proportionately. I think this was unfair.

It therefore follows that the original option of making a claim for repairs was open to Mr D without the need to pay an additional premium. As the failure to pay the additional premium was the reason why Watford cancelled the policy, I think it acted unreasonably.

When Mr D complained to Watford, he raised concerns about the handling of his claim. He said Watford had decided not to pursue the third party insurers, had asked him for the

registration details of the third party car when already provided, and had failed to contact two witnesses of which he'd provided details.

In my provisional decision I said I couldn't see that Watford addressed this part of Mr D's complaint in its final response letter dated 23 September 2021. I said I would consider any further information Watford provides in response to my provisional decision. I noted that in November 2021 Watford closed the claim as it hadn't received any information from the third party insurers.

In response, Watford says the broker and claims handling agent has responded to Mr D's complaints about the way the claim was handled separately. This service is investigating Mr D's concerns about the handling of the claim separately. So I haven't formed any conclusions about this part of Mr D's complaint in my final decision here.

However, while Watford has passed the administration of the claim handling to another party, the outcome in relation to the claim settlement is within my remit to set out within this decision – as any claim made under the policy is made under the contract which is with the underwriter (Watford) of the policy.

Due to the time that has passed and the fact Mr D sold his car after carrying out what he describes as minimal repairs, it's not possible to ask Watford to either pay the equivalent costs to proportionately repair Mr D's car – although if Mr D did pay the additional amount – I think Watford would be liable to cover all of the repair costs.

In my provisional decision I said I hadn't seen the engineer's report so I didn't know what the estimated costs were to repair Mr D's car. I said I would review the report if Watford provides a copy. Mr D told us the estimated costs to repair his car were £5,000.

Watford hasn't provided a copy of the engineer's report.

It's also worth mentioning that Mr D told us that he intended to sell his car at some point due to the high mileage and this decision was separate to his complaint. But I don't think this detracts from the fact that Mr D seems to have sold his car for around £4,000 less than the valuation Watford relied on of £19,239. Mr D has provided a copy of his bank statement showing a bank transfer to his account with the car registration details for a sum of £15,500. I'm reasonably satisfied from the evidence Mr D has provided that this is the sum he received for his car when he sold it.

So the remaining issue for me to decide is a fair outcome to resolve Mr D's complaint. In line with my provisional decision, I think Watford should provide a letter confirming the cancellation was an error on its part and remove any record of the cancellation on internal and external databases. I say this because – but for the fact Mr D didn't pay the additional premium – his policy would have continued. And I think, given the estimated costs of the repairs, it's more likely than not Mr D would have claimed for the repairs under the policy.

So the remedy set out below is the same as my provisional recommendations to put things right. And as I'm requiring Watford to meet the claim, the policy has therefore been used and so Watford can deduct the yearly premium – but at the original rate – from the balance settlement it pays Mr D.

Watford doesn't agree a fair compensation award is £400. But I think Mr D was unfairly asked to pay a higher premium – which led to the cancellation of his policy – and impacted his decision to claim for repairs to his car. He's had the impact of having a cancelled policy and been out of pocket in arranging interim repairs and selling his car for considerably less than the market value of it. So I think £400 compensation is an appropriate award to reflect

the distress and inconvenience Watford caused Mr D.

It's not clear if Mr D paid the additional premium – or if he paid it after the policy was cancelled. I've factored the possibility of either outcome into my recommendations below.

My final decision

My final decision is that I uphold this complaint. I require Watford Insurance Company Europe Limited to do the following:

- Pay Mr D the difference between the market valuation it obtained of £19,239 and the sale price of £15,500 for the car minus the original premium for the policy - taking into account the balance higher premium (if paid) and amendment fee Mr D paid which I think wasn't owed. Watford should provide a clear breakdown to Mr D when it pays the final balance settlement.
- Pay interest on the balance at a rate of 8% simple interest per year from the date of the claim to the date it pays.
- Pay Mr D £400 compensation for the distress and inconvenience it caused as Mr D was significantly out of pocket due to Watford's actions in cancelling the policy and not meeting Mr D's claim.
- Provide Mr D with a letter confirming the cancellation was made an error by Watford Insurance Company Europe Limited. Remove a record of the cancellation on any internal and external databases.

Watford Insurance Company Europe Limited must pay the compensation within 28 days of the date on which we tell it Mr D accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

If Watford Insurance Company Europe Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr D how much it's taken off. It should also give Mr D a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 June 2022.

Geraldine Newbold
Ombudsman