

## **The complaint**

Miss T complains that Watford Insurance Company Europe Limited (Watford Insurance) avoided her motor insurance policy (treated it like it never existed) and refused to pay her claim.

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

## **What happened**

Miss T took out a motor insurance policy with Watford Insurance through an online price comparison site.

When her car was stolen, she tried to make a claim on her insurance policy.

Watford Insurance said she'd answered the question it asked about the registered keeper and legal owner of the car incorrectly. And it considered this to be a reckless qualifying misrepresentation, which entitled it to avoid her policy, decline her claim and keep the premium she'd already paid.

Miss T brought her complaint to us and our investigator thought it should be upheld. They agreed there had been a qualifying misrepresentation. But didn't think this was deliberate or reckless. They believed it was careless. They thought Watford Insurance was entitled to avoid Miss T's policy and decline her claim but that it should return the premiums she'd paid to her.

Watford Insurance doesn't agree with the investigator and has asked for an ombudsman's decision. It said she had been advised clearly to input the correct information. The V5 document clearly shows who is the registered keeper is and if she did not have this document, she should have requested a copy.

## **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.

Watford Insurance said Miss T failed to take reasonable care not to make a misrepresentation when she stated in her application, via an online price comparison site, that she was the registered owner of the car.

I saw that during the online application Miss T was asked the following question; *"Are you or will you be the registered keeper and legal owner"* and she answered *"Yes"*.

I saw there was an explanation that said; *"If you are unsure, the log-book will record the car's registered keeper, which is not necessarily the same as the legal owner."* Consequently, Watford Insurance thought that Miss T should have checked these documents.

Miss T's car was leased and therefore the leasing company was the owner of the car. So she should have answered "No" to this question.

Miss T said she unknowingly provided the wrong information as she honestly thought she was the registered keeper of the car. I think from what I've seen that the questions about the car's ownership were clear and it was reasonable for Watford Insurance to say that Miss T had misrepresented her information.

For an insurer to avoid a policy, as Watford Insurance has here, the insurer must show that misrepresentation led it to offer cover that it wouldn't otherwise have done or at least on different terms, this is known as a 'qualifying misrepresentation'.

Watford Insurance has provided evidence of its underwriting criteria. This shows if Miss T had provided the correct information it wouldn't have offered cover in any capacity, as it does not offer cover for leased vehicles.

This means I'm satisfied Miss T's misrepresentation was a qualifying one.

Watford Insurance said Miss T's misrepresentation was reckless because she had all the information available to her to answer the question about the registered keeper and owner of the car correctly. Or she could have obtained it prior to completing her application for insurance, which she did not do.

I don't agree that Miss T's misrepresentation was reckless because I accept that she did think she was the registered keeper. I understand Miss T could have checked the car log-book if she was unsure, but as she honestly thought she was the registered keeper of the car, she was not unsure, and so thought she had no reason to check. It is Watford Insurance's responsibility to prove there has been a reckless misrepresentation but I haven't seen sufficient evidence to confirm this. I think her misrepresentation was careless.

As I'm satisfied Miss T's misrepresentation should be treated as careless, I've looked at the actions Watford Insurance can take in accordance with CIDRA.

In this case as it would not have offered a policy it was entitled to avoid Miss T's policy in accordance with CIDRA.

And, as this means that – in effect – her policy never existed, Watford Insurance does not have to deal with her claim following the theft of her car. This includes her claim for

belongings. And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Watford Insurance to rely on it to avoid Miss T's policy produces the fair and reasonable outcome in this complaint.

As I think Miss T's misrepresentation was careless, although Watford Insurance can avoid the policy, it should refund any premiums paid for the policy to Miss T.

I understand Miss T will be very disappointed with this outcome as it will have been a stressful time for her and she has suffered a significant financial loss, but for the reasons outlined, I am unable to ask Watford Insurance to settle her claim.

Therefore, I partially uphold Miss T's complaint and require Watford Insurance to refund any policy premiums paid.

### **My final decision**

Watford Insurance Company Europe Limited must refund all premiums paid by Miss T for the avoided policy, plus 8 % simple interest. It must pay this within 28 days of the date on which we tell it Miss T accepts my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 22 July 2022.

Sally-Ann Harding  
**Ombudsman**