

The complaint

Mr B complains that Watford Insurance Company Europe Limited cancelled his motor insurance policy and declined his claims.

What happened

Mr B was in an accident when he ran into the back of the car in front. His car was then stolen after being left in a safe place. Watford paid Mr B's claim for the loss of his car. But it later said this was a mistake as Mr B had told it that he'd added tinted windows to the car after he took out his policy. Watford said that if it had known this, then it would have asked Mr B to remove them or cancel the policy. After some confusion by a case handler, Watford asked Mr B to refund its settlement and it said he was liable for the other driver's costs. It offered Mr B £200 compensation for the confusion caused by its claim handling.

Our Investigator recommended that the complaint should be upheld. She saw that Watford wouldn't have offered cover if Mr B had told it that he'd tinted the windows. And she thought the policy required Mr B to tell Watford about modifications to his car. But she thought Mr B didn't know that the tinted windows were classed as a modification. And she couldn't see that they were material to Mr B's claims.

So she recommended that Watford should remove records of the cancellation from any databases, confirm to Mr B that it's providing indemnity for the two claims and he isn't required to refund its outlay, refund any repayments he'd made, with interest, and pay him £400 compensation for his trouble and upset.

Watford replied that Mr B had added the tinted windows a day after he'd taken out his policy. It thought he should have reasonably known that they were a modification and informed his broker. It said the policy would then have been cancelled. And so it thought Mr B was responsible for the cancellation and the declined claims. Watford asked for an Ombudsman's review, so the complaint has come to me for a final 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.

I was sorry to hear that Mr B was injured in the accident. I can understand that this has been a stressful and a worrying experience for him.

Watford said it had cancelled Mr B's policy and declined his claims because he hadn't told it about modifications he'd made to his car after he had taken out his policy.

Watford said Mr B had bought his policy the day before he tinted the windows and so it thought he must have known he intended to make this modification but hadn't disclosed it.

From the Proposal Form, I can see that Mr B bought the policy five days before he made the modification. Mr B has also explained to us that he didn't know that tinting the windows was a modification. He explained it was done to protect his children's privacy and provide comfort. But there's no dispute that Mr B tinted the windows a day after the policy started as shown by the invoice he provided to Watford.

I can see that in the policy document under “Changes which may affect Your cover”, it is stated,

“The Terms of Your Policy and premium are based on the information You have given us. if any of this information changes You must notify Us by calling Your broker. Below are some examples of what You should tell us. Please note these lists are not exhaustive and You should contact Your Broker if You are unsure about whether You need to inform Us of a change...”

Mr B was then advised to call his broker if he intended to make any modifications. And a list of examples was provided, including “Cosmetic changes such as alloy wheels”.

And the policy goes on to state:

“Please be aware that this is not a full list of all possible changes. All changes made from the manufacturer’s standard specification must be disclosed. This Policy does not cover any non-standard parts (modifications).”

I think this is a common condition in insurance policies, and I don’t think it’s unusual. This is known as an ongoing duty of disclosure. These are often referred to as “change in risk clauses”.

And we’d expect the insurer to highlight this sort of term at the start of the policy and make sure it clearly sets out the changes it wants to know about. If it doesn’t we may not consider it fair for an insurer to take any action if the consumer fails to tell it of a change in circumstances.

And I think Watford set out the condition reasonably clearly in its policy documents so that it was drawn to Mr B’s attention. I can also see that the policy doesn’t cover any modifications. And Watford has provided an extract from the underwriting guide showing that it wouldn’t have offered cover if the tinted windows had been disclosed.

I can see that on page three of the policy booklet, Watford explains that it has the right to cancel the policy with seven days’ notice if there has been a breach of the policy’s terms and conditions. And so I would usually agree Watford could say that undisclosed modifications were a breach of the policy’s terms and conditions and so it could cancel the policy.

However, our approach is that we might not necessarily consider the insurer’s application of change in risk clauses to be fair and reasonable in all circumstances. This is because by issuing a policy, the insurer has effectively promised to cover the consumer against certain contingencies.

And in many cases, if the consumer’s circumstances change during the term of the policy, that is generally just part of the risk the insurer agreed to take on. So for *non-fundamental* changes we would not normally expect the insurer to then change its mind about what cover, if any, it will provide.

We think it’s reasonable for the insurer to vary the terms of an insurance policy after it has begun only when the nature of the risk changes fundamentally. So I’ve considered whether the tinting of the windows has been a fundamental change in risk to Watford.

Our approach is that we don’t normally consider the addition of such things as alloy wheels or a Sat-Nav to a car fundamental. But if a car was modified to such an extent that it completely altered the specification, e.g. a new and much more powerful engine, we are likely to consider this a fundamental change in the risk.

Mr B tinted his car’s windows. And I’m satisfied that this wasn’t a fundamental change in risk to Watford. So I think it was unfair and unreasonable for it to rely on this to cancel Mr B’s policy and to decline his claims.

When a business makes a mistake, as I think Watford has done here, we expect it to restore the consumer's position, as far as it's able to do so. And we also consider the impact the error had on the consumer.

Mr B has had a cancellation on his record, he had to reimburse Watford for the claim payment, he is being pursued for its other outlay, and he's been caused significant upset and trouble by the unfair cancellation.

So I think Watford should reasonably remove any records of the cancellation, so that Mr B doesn't need to disclose it in the future. I think it should indemnify Mr B's claims, reimburse Mr B the repayments he's made, with interest as Mr B has been without his money for some time, and compensate Mr B for his trouble and upset. Our Investigator recommended that Watford should pay Mr B £400 compensation. I think that's fair and reasonable as it's in keeping with our published guidance.

Putting things right

I require Watford Insurance Company Europe Limited to do the following:

1. Remove any record of the policy cancellation from external databases.
2. Confirm to Mr B that indemnity is provided for the two claims and he's not required to pay Watford anything towards its outlay.
3. Reimburse any payments Mr B made towards the sums he was asked to repay and pay him 8% interest simple per annum on those sums from the date he paid them to when they are reimbursed. **Note:** if Watford considers it should deduct income tax from the interest element it may do so but should provide Mr B with the relevant certificate.
4. Pay Mr B £400.00 compensation for the significant distress and inconvenience caused to him by the unfair cancellation of his policy.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. 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 23 September 2022.

Phillip Berechree
Ombudsman