

The complaint

Ms K complains that Watford Insurance Company Europe Limited unfairly declined cover for a claim she made and cancelled her car insurance policy.

What happened

Mr K took out a car insurance policy with Watford Insurance through a price comparison site. When her car was damaged in a collision, she tried to make a claim.

Watford Insurance said she'd answered the question it asked about the value of the car incorrectly. And it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to decline cover for the claim and cancel the policy.

Ms K brought her complaint to us and our investigator thought it should be upheld. He agreed there had been a qualifying misrepresentation, but didn't think this was deliberate or reckless. He believed it was careless.

Our investigator thought Watford Insurance should reinstate the policy and consider Ms K's claim. If it settled the claim, it should do so proportionately. He also said Watford Insurance should remove references to the policy having been voided from databases, and treated as if Ms K had cancelled it. He also said Watford Insurance should pay £200 compensation.

Watford Insurance didn't agree with the investigator and asked for an ombudsman's decision. It maintains the error made by Ms K should be considered as reckless, which would allow it to void the policy and retain the premiums.

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 Representations) 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 thinks Ms K failed to take reasonable care not to make a misrepresentation when she entered details on the price comparison website about her car.

Specifically, it says she was asked the value of her car, and said it was £3,000 which is significantly less than the actual value.

The fact that Ms K gave a significantly lower value for the car than it was actually worth isn't disputed by Ms K. She says (and Watford Insurance accepts) that she intended to enter £30,000 when responding to the question, but mis-typed, omitting a zero, meaning she entered £3,000.

I accept that Ms K had a duty to take reasonable care when she completed these questions, and by mis-typing this and not realising her error before taking out the policy, she didn't take reasonable care.

Watford Insurance has provided evidence which shows that if Ms K had correctly declared the value of the car when she took out the policy, the premium would have been significantly higher – it would have been over £1,700 more than she paid.

This means I'm satisfied Ms K's misrepresentation was a qualifying one.

Watford Insurance has said Ms K's misrepresentation was reckless because she had a duty to ensure she correctly entered the value of the car on the price comparison site, and the importance of giving accurate information was clear when completing these details. It said it was necessary for her to "*thoroughly double check*" and that the omission of a zero is "*noticeably different*."

CIDRA says that a misrepresentation is deliberate or reckless if the consumer "*knew that it was untrue or misleading, or did not care whether or not it was untrue and misleading, and knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer*." CIDRA also says an insurer has to show a qualifying misrepresentation is deliberate or reckless. If it isn't deliberate or reckless, the misrepresentation will be careless.

Watford Insurance's view would therefore seem to be that Ms K didn't care whether or not she provided the incorrect value of the car.

I don't agree that Ms K's misrepresentation was deliberate or reckless. There's no dispute that the incorrect value was entered, and not amended. That doesn't mean that Ms K didn't care. This wasn't a binary yes/no question, but one where Ms K typed in a value, omitting a zero.

Watford Insurance hasn't demonstrated Ms K's error amounts to her not caring about whether the answer was correct or not. The need to double check her responses, and not noticing the error doesn't amount to a deliberate or reckless act either. I've seen nothing to suggest that an error of this nature, the omission of a zero, could amount to a deliberate or reckless misrepresentation.

Therefore, as I'm satisfied Ms K's misrepresentation was careless not reckless or deliberate, I don't think Watford Insurance is acting fairly by voiding her policy and not paying the claim. CIDRA reflects our long-established approach to misrepresentation cases. If a misrepresentation isn't deliberate or reckless then CIDRA says it's careless. I've looked at the actions CIDRA says Watford Insurance can take in the event of a careless qualifying misrepresentation being made. CIDRA says that where the insurer would have offered the policy, but on different terms, a claim can be settled proportionately. There's no right of the insurer to void or cancel a policy if the insurer would have offered the policy on different terms.

Watford Insurance has demonstrated that it would have offered the policy in different terms if the car value had been declared correctly – by charging a higher premium. This means Watford Insurance can't fairly void Ms K's insurance for reckless misrepresentation. It needs to reinstate the policy and reconsider the claim in accordance with the remaining policy terms and conditions. In the event that it makes a settlement, this would be on a proportionate basis, taking into account what the correct premium would have been if the misrepresentation hadn't occurred and the amount actually paid.

From the evidence available to me, Watford Insurance cancelled the policy, giving seven days notice of its intention to do so. That isn't the normal process to be followed where an insurer considers a misrepresentation to be reckless or deliberate. In those cases, we'd expect to see an insurer avoid the policy back to inception, and retain the premium paid, which is the redress available under CIDRA. However, I note that the exact date of cancellation isn't material to my consideration of this complaint.

I understand Ms K's paid for the repairs to her car herself after Watford Insurance unreasonably declined cover and voided the policy. Any settlement would need to be based on the amount she paid, as opposed to any beneficial rates Watford Insurance would receive from repairers if it had covered the repairs originally. It should also pay 8% simple interest on any settlement amount from the date Ms K paid the relevant costs to the date of settlement.

Watford Insurance should remove any reference to the voiding of the policy from its systems and databases shared with other insurers. It should provide a letter to Ms K to confirm this has been done which can be provided to her new insurer so they may potentially recalculate her premium based on this.

Watford Insurance should also pay £200 as compensation to Ms K to recognise the distress and inconvenience caused to her. It unreasonably cancelled her policy. This meant she had to arrange alternative insurance as a matter of urgency. She also had to arrange for her car to be repaired without the assistance of her insurer. These things wouldn't have happened if the misrepresentation had been correctly considered careless. She's also been unfairly told by Watford Insurance that her inadvertent error in declaring the value of the car was reckless. I'm satisfied that £200 compensation adequately recognises the level of distress and inconvenience caused to her.

My final decision

It's my final decision to uphold this complaint. In order to put things right, Watford Insurance Company Europe Limited must:

- Reinstate Ms K's policy.
- Reconsider the claim in accordance with the remaining terms and conditions of the policy.
- In the event that it makes a settlement, it may do so on a proportionate basis.
- Pay 8% simple interest on any settlement amount from the date of Ms K's payment of those costs to the date of settlement.
- Remove any reference to the policy having been voided from systems and databases.
- Provide a letter to Ms K confirming that the policy voidance has been removed.
- Pay £200 compensation. Watford Insurance Company Europe Limited must pay this amount within 28 days of us telling it that Ms K accepts this decision. If it doesn't, then it must pay 8% simple interest on this amount from that date to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or

reject my decision before 30 November 2022.

Ben Williams
Ombudsman