

## **The complaint**

Mr H complains his insurer Watford Insurance Company Europe Limited (“Watford”) declined his claim after an electric fire in his vehicle because the name on the V5 certificate wasn’t the same as the policyholder.

## **What happened**

Mr H had motor vehicle insurance with Watford from 10 April 2021.

In January 2022 there was a small electrical fire in the vehicle. Mr H says following the fire Watford collected the car to inspect it, and the car was placed in storage.

Mr H received an email from Watford saying it wanted to check the driver details since it wasn’t able to read some of the documents Mr H had sent in. Mr H says Watford took a long time to respond to emails so the matter went on for some time.

Mr H says Watford then declined the claim because it said the car wasn’t owned by Mr H and he had no financial interest in it. When Mr H showed he had financial interest in the car since he paid for it Watford said it wouldn’t pay the claim because the V5 document isn’t in Mr H’s name.

Mr H says the car is registered to someone else but that person lives at the same address as him. And on that basis the insurer has refused to pay the claim out. Mr H says he had to purchase another car because Watford declined the claim, which has left him out of pocket. Watford said when Mr H took out the policy he was asked a series of questions which allowed the underwriter to determine whether they chose to offer cover and if so at what cost. At that stage Mr H said he was the registered keeper and owner of the vehicle and so the policy was offered on that basis.

When Mr H made the claim for the fire Watford said it noted the car was registered to the named driver on the policy. And the underwriter would only offer a quote where the policyholder, or their spouse, is the owner and registered keeper of the vehicle. And so if Mr H had told Watford who the registered keeper actually was it wouldn’t have offered him a policy.

Mr H wasn’t happy with the response from Watford and so he referred his complaint to this service. Our investigator looked into things for him. She said she agreed with Mr H and that the insurer had treated Mr H unfairly. She said by failing to follow the rules under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) Watford had affirmed Mr H’s cover and therefore should deal with the claim under the terms of the policy.

Watford disagreed with the investigator’s outcome. It said it hadn’t seen the bank statement from Mr H to show he had an insurable interest in the vehicle. It also said since Mr H inceptioned the policy in his own name when he was aware the V5 and receipt of purchase was in the named driver’s name it shows a reckless misrepresentation on Mr H’s part. Watford said had Mr H advised it at inception that the named driver was the registered owner and

keeper the policy would not have been offered. And so would not have been in place at the time of the fire.

Watford said the decision to cancel the insurance was posted but due to the time frame to the policy lapsing this didn't happen. And this benefits Mr H since he has not had a policy cancelled and so doesn't need to disclose this to any future insurers. Since Watford disagreed with the investigator's outcome the complaint has come to me for a 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'd like to start by reassuring both parties that I've considered all the information provided to me as well as comments from both sides. But I've focussed on what's relevant to the outcome of this complaint.

I appreciate Mr H has experienced a difficult time during the course of the claim so I can see this has been a stressful experience for him. Mr H feels very strongly that Watford has treated him unfairly.

#### *Misrepresentation*

The relevant law in this case is CIDRA. This requires consumers to take reasonable care not to make a misrepresentation when taking out an insurance policy. And if a consumer fails to do this the insurer has certain remedies provided the misrepresentation is a qualifying one. For it to be qualifying 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 depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Watford say Mr H failed to take reasonable care not to make a misrepresentation when he took out the policy via a price comparison website.

I've looked at the questions asked by the site when Mr H was purchasing the policy. The relevant page asks, '*Are you (or will you be) the registered keeper and legal owner?*' There is a 'yes/no' choice to answer, and Mr H answered 'yes.' There is an explanation box next to that question which says, "*The registered keeper is named on the V5 certificate and will hold this document.*" The name on the V5 certificate is the named driver on the policy but Mr H still answered yes to this question. I'm satisfied the question asked by Watford was clear and so I think Mr H failed to take reasonable care not to make a misrepresentation.

I will now move on to whether the misrepresentation was a qualifying one. And what Watford would have done had it known the correct information.

Watford has provided evidence by way of correspondence from the underwriter that shows it would not have provided cover if it had known Mr H was not the registered owner. And so I agree with Watford's view that Mr H made a qualifying misrepresentation.

I have looked at what Mr H has said about why he said he was the registered owner of the vehicle since he had paid for it. I empathise with Mr H's position here and can see why he is frustrated; he perhaps didn't appreciate the potential consequences of his actions.

Watford said once it was aware of the misrepresentation it dealt with the policy as if it were to void or cancel it. And the underwriter did issue notice to cancel within seven days, however the policy lapsed. Watford said Mr H has been advantaged by this because he now doesn't have to declare a void or cancelled policy to future insurers.

When Watford became aware Mr H wasn't the registered keeper of the vehicle and the underwriter confirmed the policy would be cancelled then I would have expected Watford to avoid the policy. Avoiding the policy would mean there was no policy in force when the damage to the vehicle occurred, and so Watford wouldn't have to deal with the claim. But Watford didn't do this. Instead it tried to cancel the policy giving seven days' notice as per the terms of the policy. I think this, in effect, affirmed the contract it had with Mr H by relying on policy terms in declining the claim, despite the fact it knew Mr H had failed to take reasonable care not to make a misrepresentation.

The claim was made in January 2022 and the policy was due to lapse on 9 April 2022. The letter from the underwriter is dated 28 March 2022 so Watford could have avoided the policy at any time until the policy expired, refused all claims, and not returned the premiums if it considered the misrepresentation to be reckless. By keeping the premiums and allowing the policy to lapse Watford have effectively affirmed the contract.

Watford have said it chose to cancel the policy and then it allowed the policy to lapse. In doing so it made the decision that the policy was live and active up to the point it lapsed. And since it received a claim for something that happened during the time the policy was active I'd expect it to assess the claim in line with those policy terms.

### **Putting things right**

In summary while I think Mr H made a qualifying misrepresentation when he took out his policy with Watford, I think the fair and reasonable outcome to this complaint is for Watford to now deal with the claim under the terms of the policy. This is on the basis it waived its right to rely on the misrepresentation. And instead allowed the policy to lapse thereby confirming it as a live policy.

### **My final decision**

For the reasons set out above I uphold Mr H's complaint and direct Watford Insurance Company Europe Limited to now deal with Mr H's claim under the terms of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 December 2022.

Kiran Clair  
**Ombudsman**