

The complaint

Ms H complains that Watford Insurance Company Europe Limited (Watford) avoided her car insurance policy (that is treated it like it never existed) and refused to pay her claim.

What happened

Ms H took out her car insurance policy with Watford through a price comparison site. She made a claim on the policy following an accident.

Watford said when Ms H took the policy out, she answered a question on the price comparison site about whether her car had any modifications incorrectly. Watford said had it known about the modifications, it wouldn't have offered cover. So Watford avoided Ms H's policy, turned down her claim and kept the premium she'd already paid

Ms H complained to us and our investigator upheld her complaint. Our investigator thought Ms H had made a misrepresentation – because her car had been modified. But she didn't think Watford had shown Ms H's misrepresentation was what's known as a "*qualifying misrepresentation*". So our investigator said Watford should settle Ms H's claim in line with the remaining terms and conditions of her policy.

Watford disagrees with our investigator and has asked for an ombudsman's decision. It says it's reasonable to assume Ms H was aware her car had been adapted from its manufactured state but hadn't disclosed this when she took out the insurance.

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.

Having done so, I've decided to uphold Ms H's complaint

The relevant law here is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This says consumers must 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, as long as the misrepresentation is what CIDRA calls a "*qualifying misrepresentation*". For it to be a qualifying misrepresentation, the insurer has to show it would've 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.

Watford says Ms H failed to take reasonable care not to make a misrepresentation when she answered "*no*" to the question "*Has the car been modified in any way?*", which she was asked when she took the policy out on the comparison site. This is because the report

Watford got from the engineer who assessed the damage to Ms H's car after the accident said it had various non-standard items fitted – its exhaust, air filter, windscreen decals and suspension springs.

Watford said that, while modifications like the exhaust system and other mechanical modifications could be overlooked by a lay person, the decals and lowered suspension should've been obvious. Watford has sent us photos showing the decals on Ms H's car, along with photos of cars of the same make and model as Ms H's, which it says shows the suspension on her car was lower than the manufacturer's standard.

Watford also says that, if Ms H had clicked on the information "i" icon next to the question about modifications, she would've been advised:

"If you or a previous owner has made a change from the manufacturer's original specification, such as alloy wheels, air conditioning, bodywork, exhaust system, suspension, or tinted windows, add it here. If you're unsure if your car's been modified, check its previous history to find out".

And Watford says if Ms H had answered "yes" to the question about modifications, she'd have been offered a drop-down menu from which to select the modifications that had been made to her car.

Ms H says she didn't know the car had been modified when she bought it. She says "*no one tells you*" and she just liked the car. I'm satisfied, on balance, that Ms H didn't know her car had been modified.

I also don't think it would be obvious to a reasonable consumer just looking at the car itself that the suspension was lower than the manufacturer's standard. I think you'd need to have had an unmodified model alongside Mrs H's car for that to be clear – and I've seen nothing to suggest that happened here. Nor do I think it would be obvious to a reasonable consumer that the decals were a "modification". So, as well as being satisfied Ms H didn't know her car had been modified, I don't think the reasonable consumer would've been on notice of this either.

That means I don't think Ms H would've had any reason to think her answer to the question "*Has your car been modified in any way?*" might be wrong or need checking. In my view, Ms H didn't breach her duty to make a fair presentation of the risk to Watford in answering the question as she did. It follows that Watford has treated Ms H unfairly because the actions it's taken aren't in line with CIDRA, which also reflects our long-standing approach to cases like these. So Watford must reinstate Ms H's policy, deal with her claim under the remaining terms of her policy and remove all records of the voidance from any internal and external databases.

My final decision

For the reasons I've given, I uphold Ms H's complaint. I direct Watford Insurance Company Europe Limited to reinstate Ms H's policy, deal with her claim in accordance with the terms and conditions of her policy and remove all records of the voidance from any internal and external databases.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 30 November 2022.

Jane Gallacher

Ombudsman