

The complaint

Ms M complains that Watford Insurance Company Europe Limited unfairly voided a car insurance policy and refused to pay her claim.

What happened

Ms M insured a car with Watford Insurance. Her car was damaged in an accident and she claimed on the policy.

After making enquiries, Watford Insurance declined cover for the claim, voided Ms M's policy and retained the premiums she'd paid. It said she'd answered the question it asked about her occupation incorrectly. It considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to void the policy and retain the premiums.

Ms M referred her complaint about this to our service after Watford Insurance rejected it. Our investigator thought Watford Insurance could fairly cancel the policy, but it should repay the premium paid. Watford Insurance didn't agree, and requested an ombudsman's 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.

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.

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. The remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Watford Insurance thinks Ms M failed to take reasonable care not to make a misrepresentation when she renewed the policy. It said she should have declared her job working at a casino at that point but didn't do so.

The policy that has been voided was a renewal of an existing policy. For the purposes of CIDRA, a renewal is treated as a separate contract to the original policy. Watford Insurance needs to demonstrate that Ms M made a qualifying misrepresentation when the policy was renewed in order to fairly void the renewed policy.

I've looked at the proposal form Mrs M was sent when she renewed the policy. This form includes a disclaimer which highlighted the importance of checking that all of the information

was accurate, and to contact the intermediary handling the renewal if any changes were required. There was also a declaration at the end which said *"I have read the above statements and I confirm they are complete and correct as far as I know."*

The proposal form gave details of the people who would be insured to drive the car. It detailed their primary and secondary occupations. Ms M's primary occupation was listed as a beautician, with no secondary occupation listed.

At the point of renewal, it appears to be accepted that Ms M's primary occupation was working in a casino, with her employment as a beautician being a secondary employment. She'd taken on the employment at the casino during the previous period of cover. I'm satisfied she should have declared the casino employment when reviewing this proposal form. I'm satisfied she didn't take reasonable care in renewing the policy without notifying Watford Insurance of her change in employment.

Watford Insurance has provided a relevant excerpt of their underwriting criteria. These confirm it doesn't offer insurance to those whose employment is at a casino. I'm therefore satisfied Watford Insurance would have acted differently (in that it wouldn't have offered the renewal) if Ms M had correctly disclosed her occupation. This means I can safely conclude Ms M's misrepresentation was a qualifying one.

Watford Insurance has said Ms M's misrepresentation was deliberate or reckless. CIDRA says 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 says the misrepresentation was reckless (as opposed to deliberate). Its reasons for saying this are that Ms M had taken on the new employment during the original period of insurance, and hadn't notified Watford Insurance as she should have done, and then didn't disclose this when asked about her occupation at renewal. Watford Insurance suggests she knew her occupation had changed, but her reasons for not disclosing this, connected to her not using the car to get to and from the new occupation, meant that she didn't care and was reckless.

I'm not persuaded by this. I don't dispute that Ms M didn't take reasonable care. I think the reasons given by Watford Insurance are indicators that Ms M didn't take reasonable care, but don't show she was reckless. I'm not persuaded that in not amending her occupation, Watford Insurance can fairly say Ms M acted recklessly.

Ms M's position is that she didn't properly check the proposal form, and wasn't using this car to travel to and from work. She should have still disclosed this change in her circumstances, but that doesn't mean she acted recklessly. Ms M didn't take reasonable care, and did misrepresent her occupation, but I can't conclude that her actions were deliberate or reckless.

Therefore, as I'm satisfied Ms M's misrepresentation was careless not reckless or deliberate, I don't think Watford Insurance is entitled to void her policy and retain the premium. 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.

The situation here is that if Ms M had correctly disclosed her occupation, Watford Insurance wouldn't have entered into the contract. CIDRA says that in these situations, where a careless misrepresentation has been made and a claim has been made, the insurer can fairly void the policy back to inception (thereby meaning any claims made on the policy aren't covered) but it must return the premium paid.

Watford Insurance has retained the premium (the remedy available to it where a qualifying misrepresentation is made deliberately or recklessly) but CIDRA doesn't allow that in these circumstances. It was reasonable for Watford Insurance to void the policy, but not to retain the premium.

To put things right here, Watford Insurance must return the premium to Ms M. It should have done so when the policy was voided, and has unreasonably retained that money which was rightfully Ms M's.

Watford Insurance should also pay 8% interest on the amount it returns to Ms M, from the date it voided the policy, to the date of settlement. This reflects our long standing approach where an insurer has unnecessarily or unreasonably delayed the payment, or refund, to a policyholder, as is the case here.

The additional 8% interest payment wasn't originally recommended by our investigator. I informed both parties of my intention to include this in my decision. Ms M accepted this. Watford Insurance responded, again explaining why it considered the misrepresentation to have been reckless, but didn't respond to my recommendation to pay interest. I've previously addressed why I think the misrepresentation should be classed as careless and nothing I've seen persuades me I should change this.

I do conclude however that Watford Insurance acted reasonably in declining cover for the claim. It wouldn't have entered into the contract if Ms M had correctly disclosed her occupation. Under CIDRA, it can fairly decline cover for any claims made on the policy which has been voided.

My final decision

It's my final decision to uphold this complaint in part.

In order to put things right, Watford Insurance Company Europe Limited must refund the premium paid by Ms M for the policy which was voided. It must also pay 8% simple interest on this amount, from the date it voided the policy to the date of settlement.

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

Ben Williams
Ombudsman