

## The complaint

Mr A complained that Watford Insurance Company Europe Limited declined his claim under his motor insurance policy and cancelled the policy.

## What happened

Mr A's car was damaged in an accident, and he claimed under his policy. Watford Insurance's engineer inspected the damage and noticed that Mr A's car had been modified by a rear spoiler and tinted windows. Watford Insurance said that Mr A hadn't told them about these modifications when he took out the policy and, if he had, they wouldn't have insured him at all. So they declined his claim for the damage to his car or the third-party damage because of his misrepresentation. They also cancelled his policy.

The investigator recommended that the complaint be upheld. She agreed that Mr A had made a misrepresentation. But she also thought Watford Insurance hadn't treated Mr A fairly in that they'd cancelled his policy rather than treated it as void from the outset, and so they should consider his claim under the policy and pay the third-party claim costs.

Watford Insurance didn't agree and so the complaint was passed to me to decide.

## 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.

As Watford Insurance said Mr A had made a reckless qualifying misrepresentation, I've looked at the relevant law. The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) says that a consumer needs to take reasonable care not to make a misrepresentation when taking out an insurance policy. If a consumer doesn't do this, Watford Insurance as the insurer can take certain actions as long as the misrepresentation is a qualifying one. I've looked into whether Mr A took reasonable care not to make a misrepresentation, whether the misrepresentation was qualifying, and whether Watford Insurance's actions were in line with CIDRA.

### *Reasonable care*

Watford Insurance said Mr A didn't take reasonable care when he applied for his policy via an online insurance comparison site in that he didn't disclose that his car had modifications. They said he'd made a reckless qualifying misrepresentation under CIDRA. I've looked at the question that comparison site asked him. It said, "*Does the car have any modifications?*". Mr A answered no.

Next to the question was the explanation "*Help: Modifications are non-standard changes made to the car after manufacture. These include new spoilers, alloy wheels etc but a tow bar doesn't need to be listed.*"

Underneath it says *“Please detail which modifications have been made to the car?”* There was then a list of several different types of modifications, and that included spoilers.

So I think the question asked of Mr A was clear and specific.

*What would Watford Insurance have done had they known the correct information?*

Watford Insurance have shown us their underwriting criteria that confirm they wouldn't have insured Mr A at all if he'd answered the question correctly and declared the modifications. So I'm satisfied that this misrepresentation was a qualifying one.

*Was the qualifying misrepresentation deliberate/reckless or careless?*

Mr A said he hadn't made a misrepresentation. He said as follows. He'd bought his car like that and didn't know it had been modified. If he had, he would have declared it, as he had no reason to lie. He had declared his speeding convictions and accident history, so it made no sense for him to disclose those things but not the modifications. Watford Insurance were punishing him for something outside of his control or knowledge. The modifications were more aesthetic than performance related and Watford Insurance were using them as an excuse to avoid paying for his car and the damage. However it's a commercial decision for Watford Insurance to decide if they want to cover modifications or not, and when a consumer takes out that insurance they have agreed to its terms, so it doesn't matter if they don't agree with their reasons.

But Watford Insurance said the modification questions asked of Mr A were clear. His car's modifications were visible, and he should have been reasonably aware that a rear spoiler and tinted windows would not have been standard features on his car. If he wasn't sure he could have asked Watford Insurance. And so he didn't take reasonable care not to make a misrepresentation when he said his car had no modifications and had made a reckless qualifying misrepresentation.

Mr A has referred us to cases where this Service has agreed that someone might not have any reason to think that a car had been modified, and so not declare it. But each case depends on its own facts. In this case, I think that a car having rear spoiler and tinted windows should have alerted Mr A to the possibility of modifications, and he should have checked that with Watford Insurance.

But although Watford Insurance deemed it a reckless qualifying misrepresentation, I think it was careless rather than reckless. This is because I don't think Mr A intended to deceive Watford Insurance.

Nevertheless a careless misrepresentation is still a qualifying one for CIDRA, and it still entitles Watford Insurance to avoid the policy as they have shown that they wouldn't have offered cover at all without the misrepresentation. So under CIDRA Watford Insurance can avoid the policy. This means that they can treat it as if it didn't exist from the start.

But Watford Insurance didn't avoid the policy. They cancelled his policy instead. They said that under CIDRA they “may” avoid the policy but that didn't mean that they had to. They thought that the outcome for Mr A was the same whether they avoided it or cancelled it and cancelling might be better for Mr A in future, in terms of how it might affect his ability to obtain new cover.

Mr A's policy on page 32 does make it clear that Watford Insurance have the right to cancel the policy immediately, for misrepresentations which would have caused them not to insure if they'd known.

However I don't agree that the outcome of cancellation was the same for Mr A as if they had avoided the policy and treated it as if it had not existed. Watford Insurance's cancelling the policy meant that the policy continued until the cancellation date. The policy remained live until then, and Mr A made his claim before then, when he remained insured with them. So that means that Watford Insurance can't just decline Mr A's claim, and so they must still deal with his claim and pay the third-party costs and not seek to recover those from Mr A.

As they haven't done that, they haven't complied with the policy terms or acted fairly and reasonably.

### **My final decision**

For the reasons given above, it's my final decision that I uphold the complaint and I require Watford Insurance Company Europe Limited to

- Deal with Mr A's claim and pay the third-party costs and not seek to recover those from Mr A.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 28 April 2023.



Rosslyn Scott  
**Ombudsman**