

The complaint

Ms C complains that Watford Insurance Company Europe Limited (WICEL) took the decision to cancel her car insurance policy. As a result, she has been charged fees which she doesn't find to be fair.

What happened

I previously issued my provisional decision on this case. It was my intention to come to a different outcome to the investigator. And so before I came to my final decision, I wanted to give both parties the chance to respond with anything else they wanted me to take into account.

I have copied my provisional decision below, which also forms part of this final decision.

"On 17 November 2022, Ms C took out a car insurance policy through a broker and paid the annual premium in full which was £520.34. The policy was underwritten by WICEL.

On 21 November 2022, the broker wrote to Ms C to get some more information about the named driver on the policy. Upon receipt of this information, WICEL found that the named driver had a motoring conviction that wasn't disclosed at the time the cover was taken out. Because of this, on 5 December 2022, the broker wrote to Ms C to let her know that WICEL had taken the decision to cancel the cover – and no insurance would be in place after 12 December 2022.

Ms C was unhappy with WICEL's decision. She was also unhappy she didn't get a full refund of the premium, and that she was charged £75 to cancel the cover.

The broker responded to Ms C's complaint on behalf of WICEL, however they didn't uphold it. It referred to the policy wording and said WICEL could cancel a policy where a policyholder deliberately or recklessly tells it something that isn't true. And because Ms C didn't disclose the driving conviction for the named driver, when asked during the application process, it thought it had fairly cancelled the policy. It also explained that Ms C wouldn't receive a full refund of premium because it had covered her between 17 November 2022 to 8 December 2022.

Unhappy with WICEL's response, Ms C approached this service.

The Investigator considered Ms C's complaint but didn't uphold it. They found that Ms C made a misrepresentation during the application process when she didn't disclose the driving conviction for the named driver – and they agreed with WICEL that the misrepresentation was deliberate or reckless. Because of this, they said the rules insurers follow allow it to cancel a policy and so the Investigator didn't think WICEL had done anything wrong.

Ms C disagreed with the Investigator and asked for an Ombudsman to make a decision, and so the complaint has been passed to me to decide.

What I've provisionally 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, it is my current intention to uphold this complaint and I'll explain why. 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 must 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.

WICEL thinks Ms C failed to take reasonable care not to make a misrepresentation when she answered 'no' to the following question when she took out the policy online:

"Have they [named driver] had any driving related convictions, endorsements, penalties, disqualifications or bans in the last 5 years"

There is also an information box Ms C could have clicked on for more information – had she done this, the information would have said:

"Offence codes and penalty points are recorded against the driver record. Details for the last four years can be found by visiting www.gov.uk/view-driving-license. However, please note that insurance providers require you to declare up to five years driving history".

Ms C answered "No" to this question.

Once WICEL were in receipt of the named drivers' driving license, it identified that the named driver received a SP50 in 2019 – and so it said Ms C had deliberately or recklessly answered the question.

I'm satisfied the question about the driving convictions was clear and specific. So, based on what I've seen, I don't think Ms C took reasonable care in answering the question as she did. So there does appear to have been a misrepresentation.

I've gone on to consider whether Ms C's misrepresentation was a qualifying misrepresentation. In other words, whether the incorrect information Ms C provided would have made any difference to the terms WICEL would have offered her.

To that end, WICEL has provided this service with an email to say that it would have offered Ms C a policy, even if she'd answered the question correctly. However, it would have charged a higher premium for the cover.

So, I'm satisfied Ms C's misrepresentation was a qualifying one.

I've also thought about how WICEL classified the misrepresentation. WICEL said Ms C's misrepresentation was deliberate or reckless, rather than careless. It felt it was Ms C's

responsibility to answer the question to the best of her knowledge – and it said she had clearly failed to do this, because she didn't read the question which was asked. But it hasn't provided us with much more evidence than this to support what it's said.

Ms C told us that she didn't think she needed to declare the driving conviction because she thought it was spent – she referred to some legislation to support why she thought this. So, while I accept that Ms C didn't answer the question correctly, WICEL hasn't sent me any more information or evidence to support why it thinks Ms C answered the question in a way that was deliberate or reckless. And based on what both parties have said, I don't think I can agree that Ms C was deliberate or reckless when she made the misrepresentation, rather I find that it was careless.

I'm currently satisfied Ms C's misrepresentation should be treated as careless, and so I've looked at the actions WICEL can take in accordance with CIDRA.

CIDRA sets out what an insurer is entitled to do when there's a qualifying misrepresentation. It says that if the qualifying misrepresentation is deliberate or reckless (which is what WICEL has said in this case), it can avoid the policy, refuse all claims and it doesn't have to return the premium.

For the reasons I've already explained, I don't agree that Ms C made a deliberate or reckless misrepresentation, rather I think she was careless when she answered the question. And so, I'll focus on the remedies for a careless misrepresentation as set out in CIDRA.

If a policy holder makes a careless misrepresentation, an insurer is entitled to change the terms of the policy and/or reduce proportionately the amount to be paid on any future claim. It can also avoid a policy altogether if it can provide evidence to show that it wouldn't have offered the cover on any terms, or it can cancel the cover by giving the insured reasonable notice or allow the insured to cancel the cover themselves.

WICEL has sent this service an email to say that it would have offered cover, but it would have charged a higher premium. But, as far as I'm aware, it didn't offer Ms C to pay a higher premium or offer her the policy on different terms. It could have also asked Ms C if she wanted to remove the named driver from the policy – given that the motor conviction wasn't for her (the policyholder).

While CIDRA does allow an insurer to cancel a policy after giving notice, I don't think this remedy would be fair and reasonable in this case. Cancelling a policy can have a long-lasting impact on an individual and there are other remedies that WICEL could, and in my view, should have taken that wouldn't have caused Ms C as much detriment.

I presume Ms C has since been able to obtain a new policy with a different provider, so I won't ask WICEL to offer her the policy on different terms. But I intend to order WICEL to put things right for Ms C by doing what I've said below:

- Refund £75 cancellation fee. I appreciate WICEL say it didn't charge the fee, and it is the broker that has this. But WICEL made the decision to cancel the policy when it should and could have offered it to Ms C on different terms. Ms C might not have needed to pay the £75 fee if she'd chosen to continue with the cover on different terms. And so, I think she has potentially lost out here.*
- Pay Ms C 8% simple annual interest on the £75 from the date it withheld the charge, up until the date it repays it.*
- Remove the cancellation from all external databases.*

- *Provide Ms C with a letter to say that it had incorrectly avoided her cover so she can present this to her current and future insurers if required.*
- *Pay Ms C £100 compensation for the distress and inconvenience of cancelling the cover.*

I have noted that Ms C says she wants a refund of the full premium. But there was a period of time where Ms C was provided cover by WICEL, and so it's fair that she pay the premium for this. So, I don't think WICEL needs to refund Ms C the premium for the time she was on cover.

I have also noted Ms C's comments in that she feels the issue she's had is because of the brokers 'inadequate systems not requesting old information for convictions'. I can't hold WICEL responsible for the broker's systems. But I would add that it is the responsibility of the policyholder to provide accurate information to the insurer. It is also fair and reasonable for an insurer to rely on the information provided by the policyholder. In this case, it was Ms C's responsibility to disclose the motor conviction to WICEL, it isn't up to WICEL to find this out themselves by carrying out additional checks."

Ms C responded to the provisional decision to say that she accepted it.

WICEL responded, however it didn't agree the misrepresentation Ms C made should be considered as careless as opposed to it being deliberate or reckless. It stated that in Ms C's own submissions to this service, where Ms C said:

"Their application forms made no mention of sharing spent convictions so we didn't mention one that was spent."

However, WICEL stated that the application form didn't differentiate between spent or unspent convictions. It clearly states convictions within the last five years. WICEL say that Ms C made a choice not to declare the conviction.

It has also referred to Ms C's original complaint where she's said:

"I refer you to the Rehabilitation of Offenders Act 1974 which state 'Once a conviction is spent it never has to be disclosed to insurers'"

WICEL state this is evidence Ms C deliberately withheld information on the basis that she had decided for herself that the underwriter did not need the information. It said this was not based upon the actual, and clear, question Ms C had been asked. It added that this was due to Ms C not having taken the time to read the question properly, not having checked with her broker as she could have done. Because of this, it said the misrepresentation can only be considered reckless and not simply careless.

I've attempted to resolve the matter with WICEL, however it still feels that Ms C deliberately or recklessly answered the question – and so the actions it took when it cancelled the policy are fair.

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 reassure WICEL that I've given a lot of thought to what's happened, and it is a finely balanced case. However, having taken everything into account again, my decision remains that this complaint should be upheld. And I'll explain my reasons for this below.

The definition of a deliberate or reckless misrepresentation in CIDRA is:

“2)A qualifying misrepresentation is deliberate or reckless if the consumer—

(a)knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and

(b)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.”

I do accept here what WICEL are saying. It's question specifically asks for any “*convictions, endorsements, penalties, disqualifications or bans in the last 5 years*”. So regardless of whether it was spent or not, she should have declared it. And I accept that in a lot of cases, answering in this way and in these circumstances could amount to a deliberate or reckless misrepresentation.

However, the test here is whether this particular consumer was deliberate or reckless in answering the question. I accept that Ms C's interpretation of what she'd need to disclose is wrong. While the penalty the named driver got was considered spent after three years. The endorsement wouldn't have been spent until five years. Which I also accept means Ms C should have declared it. Based on what Ms C has told us and WICEL, I'm persuaded that she genuinely thought she answered the question correctly, as her understanding, albeit incorrectly, was that the named driver's penalty points and endorsement were spent after three years and so didn't have to be disclosed. I don't think it likely Ms C knew this to be untrue or purposefully tried to mislead WICEL. So, I can't fairly conclude that the misrepresentation was deliberate or reckless.

I do accept WICEL's comments in response to my provisional decision and my further correspondence to it after this. However, for me to agree with what it's said, I'd have to be more persuaded that Ms C either deliberately or recklessly answered the question incorrectly. And for the reasons I've explained, I'm more persuaded that she was careless in answering the question.

Putting things right

To put things right for Ms C, WICEL should:

- Refund £75 cancellation fee.
- Pay Ms C 8% simple annual interest on the £75 from the date it withheld the charge, up until the date it repays it.
- Remove the cancellation from all external databases.
- Provide Ms C with a letter to say that it had incorrectly avoided her cover so she can present this to her current and future insurers if required.
- Pay Ms C £100 compensation for the distress and inconvenience of cancelling the cover.

My final decision

For the reasons set out above, I uphold Ms C's complaint. I order Watford Insurance Company Europe Limited to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 22 August 2023.

Sophie Wilkinson
Ombudsman