DRN-4332067

The complaint

Mr U has complained that Watford Insurance Company Europe Limited avoided (treated it as if it never existed) his motor insurance policy, refused to pay his claim and wants to recover its outlay from him.

What happened

Mr U took out a motor insurance policy with Watford through an online broker's site with a named driver on the policy. When the named driver was involved in an accident, Mr U tried to claim on his policy.

Watford declined his claim, avoided his policy and kept the premiums he'd already paid. When Mr U complained, it said he'd answered incorrectly the question he'd been asked about who the car's registered owner and keeper was. And it said he hadn't disclosed that the named driver had three previous fault claims. And that it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid his policy and refuse his claim. It also said it was entitled to recover its outlay for the other driver's repairs and hire from Mr U.

Mr U brought his complaint to us, and our Investigator didn't think it should be upheld. He agreed there had been qualifying misrepresentations. And he thought they were deliberate or reckless. And so he thought Watford was entitled to decline the claim, avoid the policy, retain the premiums and recover its outlay from Mr U. He thought Watford hadn't done anything wrong in deciding how to settle the claim.

Mr U doesn't agree with the Investigator and has asked for an ombudsman's decision. Mr U said he was the car's owner and keeper but had lost the paperwork.

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.

Mr U has told us that Watford's decision to recover its outlay from him is causing him stress and worry. And he says that he's not in a financial position to pay it. I was sorry to hear about this and I can understand that this has been a stressful experience for him. Mr U also said Watford didn't give him a chance to defend the claim made by the other driver. And he said he was the car's registered owner and keeper, but he has no evidence to show this.

I'm satisfied that the relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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 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. One of these is how clear and specific the insurer's questions were. And

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

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it is entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

Watford thinks Mr U failed to take reasonable care not to make a misrepresentation when he stated in his application via a comparison site that he was the car's registered owner and keeper. And it said he hadn't disclosed that the named driver had three fault claims within the previous five years.

And I've looked at the questions he was asked when he completed the application and agree he failed to take reasonable care. This is because he was asked on the broker's online application "*Are you the registered owner of the car?*" and "*Are you the registered keeper of the car?*" Popup boxes provided further information to help answer the questions if needed. Mr U answered "Yes" to both questions.

And then Mr U was asked to provide details for himself and the named driver of:

"*In the last 5 years had any accidents, claims or losses, irrespective of blame in connection with any vehicle owned or driven by you and/or them?"*

Mr U disclosed that he had had one previous claim but that the named driver had none.

And I'm satisfied these were clear questions asked by Watford through the broker's site Mr U used. Mr U said he was the car's owner and keeper, but he said he'd lost evidence to show this when a previous car was stolen. However, Mr U hasn't replaced the car's registration certificate as he could have done. So he has no evidence to show this. And I can see from Watford's file that the named driver said he was the car's owner and keeper. And I think this means Mr U failed to take reasonable care not to make a misrepresentation when he said he was the car's owner and keeper.

Mr U said he didn't know about the named driver's previous claims. But as the policy holder Mr U is responsible for providing accurate information about all drivers on the policy. And he was provided with a policy schedule stating that the named driver had no claims within the previous five years, but he didn't correct this. And I can see that the named driver had three fault claims on his record within the previous five years. And so I think this means Mr U again failed to take reasonable care not to make a misrepresentation when he said the named driver had no previous claims.

Watford has provided evidence which shows that if Mr U had not made these misrepresentations it would have declined cover. This means I am satisfied Mr U's misrepresentations were qualifying ones under CIDRA. I also think Mr U's misrepresentations were reckless or deliberate misrepresentations. This is because I think Mr U must have realised that he wasn't the car's owner or keeper. And I think he should have reasonably checked the named driver's previous claims history, but he didn't.

Therefore, I'm satisfied Watford was entitled to avoid Mr U's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, Watford does not have to deal with his claim following the accident and it can retain his premiums. Also, Watford is entitled by the policy's terms and conditions to recover its outlay for the other drive's claim from Mr U. This is explained on page 12 of the policy booklet:

“If Your claim is not accepted by Us, You may be liable to repay costs already incurred by Us. These may include, but are not limited to engineers' fees, vehicle recovery charges, and vehicle storage charges.”

And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Watford to rely on it to avoid Mr U’s policy produces the fair and reasonable outcome in this complaint.

Mr U said he hadn’t been given a chance to defend himself against the other driver’s claim. But I disagree. I can see from Watford’s records that he called it to discuss liability and it explained that it would have to settle the claim as the named driver had hit the other car in the rear. The named driver had responsibility to leave enough stopping room. And he evidently hadn’t done so. Mr U asked for a week to seek legal advice. But I can’t see that he responded further.

The investigator has already explained that it isn’t our role to decide who was responsible for causing the accident. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate how the insurer made the decision to settle the claim. Did it act fairly and reasonably and in line with the terms and conditions of the policy? And has it treated Mr U the same as someone else in his position.

Watford is entitled under the terms and conditions of its policy with Mr U to take over, defend, or settle a claim as it sees fit. Mr U has to follow its advice in connection with the settlement of his claim, whether he agrees with the outcome or not. This is a common term in motor insurance policies, and I do not find it unusual. Insurers are entitled to take a commercial decision about whether it is reasonable to contest a third party claim or better to compromise.

I can’t see that Watford had any evidence with which to defend Mr U against the other driver’s claim. It thought the repairs claimed for were consistent with the accident circumstances. And so I think it reasonably held the named driver liable and recorded the claim as fault. When it settled the other diver’s claim it incurred an outlay of £8,493.93. I think Watford has reasonably offered Mr U a repayment plan to recover this amount.

My final decision

For the reasons set out above, my final decision is that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr U to accept or reject my decision before 5 January 2024.

Phillip Berechree
Ombudsman