

The complaint

Miss H has complained about how Watford Insurance Company Europe Limited managed her motor policy following an accident.

Miss H is represented by her grandmother but for ease of reference I shall just refer to Miss H throughout this decision.

References to Watford includes all its agents.

What happened

Miss H applied for her policy on 28 August 2022. In that application she inserted her date of birth year as being 1987, when in fact it was 2004. The month and day entered was also incorrect. On the basis this showed Miss H as being aged 34 years of age, Watford offered her a policy as it doesn't offer policies to young drivers. Miss H was aged 18 at the time. And it issued the policy documents to Miss H at that time.

Sadly, in November 2022, Miss H was involved in a serious accident with another driver. During the course of dealing with that claim, Watford discovered it had the wrong details for Miss H's date of birth. However, one of its underwriters erroneously decided Watford should deal with the claim, which they duly did. But then, another underwriter told the police that cover under her policy wasn't confirmed, which lead the police to prosecute Miss H for driving without insurance. It's this that Miss H is complaining about, plus that her policy was cancelled, and she couldn't add a new car onto it on the basis that hers was written off given the accident. The Court didn't convict Miss H as Watford then issued a letter to show indemnity was given to her. The Court told her to bring her complaint to us.

The investigator was of the view that there was clear evidence on the application form that the wrong date of birth was entered into Miss H's application form. Given the underwriting guidelines which Watford used, this meant that Watford would have never offered Miss H a policy had it known her correct date of birth and that she was aged 18 at the time of applying for her policy. So therefore, Miss H had obtained the benefit of her claim being dealt with it, due to the erroneous confirmation by one underwriter. But otherwise, he thought Watford was correct to cancel the policy and not permit Miss H to add a new car to it. Plus, although attending Court for driving without insurance was obviously very stressful, she wasn't convicted. Therefore, he didn't think Watford had to do anything more.

Miss H disagreed so her complaint has been 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.

Having done so, I'm not upholding this complaint. I'll now explain why.

First, for clarity purposes since I am aware Miss H's representative has mentioned it, this complaint is set up against Watford as it is the underwriter who makes all the decisions as regards what risks will be covered and whether any indemnity is granted. None of the other entities Miss H or her representative have mentioned are the actual underwriters of this policy. Therefore, Watford is ultimately responsible for Miss H's complaint. So, all the information from other agents to include brokers is in effect dealt with by Watford, considering it has the final responsibility for the decision which affected Miss H here. That also means all the correspondence from the brokers and other agents which Miss H has detailed becomes the ultimate responsibility of Watford. So, when Watford is mentioned in this decision, it includes all the information that might have only been given by Miss H to other agents. So, it's not a question that other entities who have made mistakes are ignored. Any such mistakes made by the brokers and other administrators of this policy are ultimately covered by Watford.

Secondly, how the situation developed in this case is exceptionally confusing and therefore complicated so I can appreciate and understand why Miss H remains concerned and upset. I shall now do my best to unravel it as far as it's possible.

Watford has shown us that Miss H did enter the wrong date of birth in her application for this policy. I understand the date which was entered had no relevance for Miss H but nonetheless this was the date that was entered, and which clearly is shown on Miss H's policy documentation afterwards. It showed her year of birth to be 1987 instead of 2004 and also showed the day and month to be different as well. That meant it showed that Miss H was aged 37 at the date of her application instead of her actual age which was 18 at the time.

Watford has also shown us that it doesn't accept applications from people below a certain age and it would have never offered a policy to Miss H if it had known she was only aged 18 years of age. So, had the right date of birth been entered on the application form, the system or aggregator website wouldn't have permitted Miss H to proceed with her application for the policy underwritten by Watford at all, some other insurers who do insure such young drivers would have popped up on the aggregator website instead.

Watford is entitled to decide what risks it wants to insure and what risks it doesn't want to insure. This is part of its commercial discretion, and this is permitted by the regulator. It also forms part of its underwriting guide. So that means Watford hasn't singled out Miss H and treated her any differently from anyone whose date of birth showed they were older than they were. Given Miss H's incorrect date of birth was clearly shown on the policy documents she received from Watford with the warning that if any of the information was wrong, that she should phone a number to correct it, the responsibility for this error in the birthdate now falls on Miss H as the law requires her to read her policy documentation to ensure they are correct on receipt. If Miss H had phoned up then, to correct the date of birth, Watford would have cancelled the policy immediately and Miss H would have had to apply for a policy elsewhere. It's also clear that Miss H didn't do that at the time of receiving her policy documentation.

On this basis Watford then made several mistakes. When the accident occurred, it was clear from the information Miss H then gave, that her date of birth was different from that on the policy documentation. One of Watford's underwriters saw somewhere mistakenly that Miss H tried to change it and gave her the benefit of the doubt which allowed her claim for the accident to be dealt with. Watford ultimately paid Miss H the market value for her car given it was deemed a total loss given the damage sustained in the accident. It also appeared to deal with the other driver's claim. This was to Miss H's advantage as if that underwriter hadn't made that mistake thinking Miss H tried to change her date of birth, Miss H wouldn't

have had the money for her car and worse still would have been liable for any costs from the other driver's claim which Watford might have paid. So effectively this mistake ensured Miss H was provided with indemnity.

The next mistake Watford made was after it realised the first underwriter made the mistake above. This meant that someone else within Watford realising the date of birth incident remained unresolved indicating no indemnity could be given to Miss H, told the police that Miss H wasn't indemnified by this policy which in turn caused the police to prosecute Miss H for driving without insurance. Watford then realised that regardless of this, it had provided the indemnity which in turn enabled the Court to ensure Miss H wasn't convicted. Clearly this prosecution was unnecessary, and I can understand how distressing it was for Miss H. However, none of this would have ever happened had Miss H entered her correct date of birth to start with or saw on her policy documentation that her date of birth was wrong and sought to have it corrected.

Once all of this had occurred Watford then sorted itself out properly. It realised it had now mistakenly indemnified Miss H for her accident, paid her the value of her car and dealt with any claim from the other driver. It recognised that this came about from the mistake the first underwriter had made. On that basis it didn't seek to reclaim anything back from Miss H. I consider this was the right course of action by Watford as anything else would have been very unfair for Miss H at this stage.

However, as the wrong date of birth had to have been input by Miss H initially and that she failed to check and correct her policy documentation when she received it, Watford felt it was right that it now cancelled her policy on the basis of this misrepresentation. This meant Miss H couldn't put a new car on this policy as Watford would have never insured it in the first place given her age was only 18. Plus, Watford retained the premium paid, given it had indemnified her for the accident but also because it was for Miss H to ensure the correct date of birth was on her policy. This also meant Miss H's insurance record shows Watford cancelled her policy which Miss H will have to declare to other insurers.

When such a misrepresentation occurs like the wrong date of birth being entered into an application for a policy and then not corrected by the policyholder (Miss H) when she got her policy documentation afterwards, the law under the Consumer Insurance (Representations and Disclosures) Act 2012 (CIDRA) comes into play. CIDRA says any consumer like Miss H must take care to answer all the questions asked on the application honestly and truthfully.

So, when a consumer like Miss H inputs the wrong information into the application like her date of birth, if that meant the insurer wouldn't have offered a policy at all or would have offered it, but with a higher premium or on different terms, that incorrect answer, namely the misrepresentation is deemed a 'qualifying misrepresentation'.

So CIDRA then gives the insurer certain remedies. If the insurer would have never offered the policy at all based on the correct information, like Watford here, then it's entitled to cancel the policy as if it never existed. If the insurer thinks it was a deliberate misrepresentation of the truth, it's also entitled to retain the premium. Everyone should know their date of birth so as to input it correctly. But also, everyone is under a duty to read their policy documentation when they receive it and correct any errors, which Miss H didn't do. So, under CIDRA it remains that Watford was entitled to consider the misrepresentation Miss H made as regards her date of birth, especially as in not checking it after she received her policy documents, to be deliberate. I appreciate Miss H said every time she called following the accident, her birthdate was known but if she looked on the policy documents which were sent out to her well before the accident, it clearly shows her birth date was wrong. Therefore, I don't consider Watford did anything wrong here.

So essentially leaving aside Miss H's mistake in detailing her date of birth originally and not correcting it when she received the policy documents, the mistakes Watford made subsequently to that, actually benefitted Miss H as her accident was indemnified and she received the market value of her car and wasn't responsible for anything the other driver may have claimed. Granted it was stressful she was taken to Court but at least Watford also finally ensured she wasn't convicted.

Also, most importantly there is no duty for insurers such as Watford to check with the DVLA for every single new policy as Miss H's representative believes. The duty remained with Miss H to check her policy documents and get her date of birth corrected when she received her policy documents, not after the accident occurred. Sadly, this didn't happen as the actual policy documentation show the incorrect date of birth.

My final decision

So, for these reasons it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 28 May 2024.

Rona Doyle
Ombudsman