

The complaint

Mr H complains about how Watford Insurance Company Europe Limited (Watford) dealt with a claim on his motor insurance. References to Watford include other organisations and individuals acting on its behalf.

What happened

Mr H had motor insurance underwritten by Watford. His car was involved in a collision and he made a claim. Watford voided the policy, declined the claim and retained Mr H's premiums as it said the car had been modified and he had failed to declare this when taking out the policy.

Mr H wasn't happy with this and complained to Watford. Watford said:

"I understand that you are unhappy that indemnity for your claim has been declined due to undisclosed modifications to your vehicle. You say you were not aware of any modifications that were not part of the original factory specifications.

When you seek to purchase a policy, you are asked various questions which allow the Underwriter to determine if they wish to offer a policy and, if so, at what cost. It is your responsibility to ensure that you answer all questions correctly, to the best of your knowledge and belief.

You obtained the quotation for your policy online via [a comparison website]. At that time, you were asked, "Modifications - Has the car been modified in any way?". I am satisfied that the question was clear.

There was also a help box which states: 'A vehicle is considered modified if it has been changed in any way since it was first supplied by the vehicle manufacturer. This would include changes to the body work, suspension or breaks. Cosmetic changes, and changes to the engine management system or exhaust system. If you are unsure whether changes to the vehicle are classed as a modification, please check with your chosen provider before purchasing.'

You purchased your policy, to commence on [date], having answered the question 'No.' Your policy was acceptable, and so you were offered a quotation, on that basis. Having purchased the policy, you were then provided with your policy documentation by your insurance broker [name]. You were asked to check this carefully and to contact them if anything was incorrect.

Unfortunately, on [date], you were involved in an accident. The claim handlers received a report from the motor engineer which confirmed that your vehicle had been modified. The modifications were Rear Spoiler. As the modification makes the policy unacceptable to the Underwriter, they declined indemnity for your claim.

It may be useful if I advise that the Underwriter agrees to provide cover for very few modifications, usually only when required due to disability. As such, had you correctly

declared that your vehicle was modified with a rear spoiler, you would not have been offered a quotation and so it would not have been possible for you to have purchased the policy.

The policy would not have been in force at the time of the claim. Therefore, the Underwriter took the decision to decline indemnity for your claim and to exercise their right to cancel your policy.

I do note that you have said you did not know the vehicle was modified as it was how you had purchased it; however, it is not the responsibility of the seller to notify you of any modifications but for you to know what you are buying. Indeed, when a vehicle is second hand, it may have had several owners and the person who sells it to you may not have been the one who modified it. I am satisfied that it is evident that the vehicle was modified and that it would have been quick and easy for you to check if this was standard or not. You could do so online, where there are very many images available together with the vehicle specifications..."

Mr H wasn't happy with what Watford said and complained to this service. Our investigator upheld his complaint. She concluded that any reasonable person would declare that the car hadn't had modifications based on the evidence Mr H provided, so Watford couldn't reject the claim due to misrepresentation. She said Watford should pay Mr H £100 compensation for the distress and inconvenience caused, relook at the claim under the remaining terms of the policy, remove any record of the policy being voided or cancelled from external databases, settle the claim in line with the remaining terms deducting the cost of the premiums and pay 8% simple interest if Mr H has already paid for the repairs.

Watford didn't agree with what our investigator said so the complaint has been passed to me. Mr H wants the claim settled plus interest.

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 uphold Mr H's complaint. I'll explain why.

In its decision letter declining Mr H's claim Watford said:

"When completing your insurance policy online via [a comparison website] to commence on [date], you were asked "Has the car been modified in any way?". You selected, "No" from the options provided.

This was clearly incorrect.

Following the incident on [date] the claim handlers found the following undisclosed modification, which is unacceptable to Watford Insurance:

- **Rear Spoiler**

Under the Consumer Insurance (Disclosure and Representations) Act 2012, the Underwriter has remedies available to them where a qualifying misrepresentation is made. If the misrepresentation was deliberate or reckless, they may avoid the contract, decline indemnity for any claim and retain all premium.

We consider you made the misrepresentation recklessly, not caring whether the information was correct or otherwise.

In view of the above, I can confirm that the Underwriter will not be indemnifying you for any claim which may arise from your involvement in the motor accident on [date].”

Watford's engineer who inspected the car following the collision said that it had been modified. Watford have told this service that if it had known about this it wouldn't have offered Mr H insurance for the car.

Mr H says he wasn't aware of the modifications, and neither was the previous owner he bought the car from. He says the car wasn't advertised for sale with any modifications mentioned. In any event Mr H says he believed the modifications were an option that could have been fitted at the factory and are part of the original factory specifications. Mr H says he didn't intentionally withhold or misrepresent any details regarding the vehicle's specifications and provided all known information in good faith.

In this sort of case this service follows the guidance in The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), as we normally consider this to produce a fair and reasonable outcome. In a nutshell CIDRA says the consumer's duty is to take reasonable care not to make a misrepresentation.

CIDRA says that if the consumer didn't take reasonable care and misrepresented something which has an effect on the policy, the way the insurer can respond depends on whether the misrepresentation was careless or deliberate/reckless. If the consumer did take reasonable care then, even if there was a misrepresentation, the insurer can't take any action against the consumer at all.

As a general principle the consumer needs to answer the questions the insurer asks them. This is important as the insurer will then use that information to decide if it wants to offer cover, and if it does on what terms.

First of all, it's important to decide whether there's been a misrepresentation. Then, if there has, whether it was 'qualifying'. That's because the things we should consider and the potential remedies available to the insurer are dependent on these points.

To do this, we must first look at the information provided by the consumer and decide whether it was:

- A correct statement of fact.
- An incorrect (or incomplete) statement of fact.
- A statement of opinion.

If a consumer gave an incorrect or incomplete statement of fact, they made a misrepresentation.

In this case, Mr H answered "no" to the question asking if the vehicle had been modified. Watford's engineer decided that it had in fact been modified, and I have seen no other expert evidence to contradict this. So there was a misrepresentation.

The next step is to decide whether it was a 'qualifying' misrepresentation.

This is important – because if there's not a qualifying misrepresentation the insurer can't take any action at all, even if the information it was provided with was incorrect.

Under CIDRA there are two main factors to take into account to decide whether there's been

a qualifying misrepresentation. Firstly, did the consumer take reasonable care not to make a misrepresentation ?

If the consumer did take reasonable care, the insurer won't be able to take any action at all, as there won't be a qualifying misrepresentation. If the consumer didn't take reasonable care, then whether the insurer has any remedy will depend on whether the incorrect or incomplete information the consumer provided would have made any difference to the terms the insurer would have offered or whether the insurer wouldn't have offered cover at all.

The test for whether or not the consumer took reasonable care is set out in CIDRA. The standard of care required is that of a 'reasonable consumer'. This means we need to consider what a reasonable consumer would have done in the circumstances. The onus is on the insurer to ensure that information is obtained through clear questions put to the consumer. And the onus is on the consumer to take reasonable care not to make a misrepresentation when answering those questions.

Consumers are only expected to answer questions to the best of their knowledge and belief. I have very carefully considered the information provided by Watford and by Mr H to decide what a reasonable consumer taking reasonable care would have done in the circumstances if this case.

I note that after receiving our investigator's view, Watford said to this service:

"I would like this to be reviewed by the Ombudsman please as the inhouse engineer has come back again confirming that he is not saying the spoiler was supplied by [online retailer], he doesn't know who supplied the spoiler. However, its available for sale at [online retailer]. The one on the [manufacturer] accessories sheet is very similar but confirms the one fitted to the policy holders vehicle is an aftermarket one."

So it seems to me that Watford and its expert engineer accept that the spoiler fitted to Mr H's car was "very similar" to the spoiler that the manufacturer would have fitted. So I don't think that a reasonable consumer taking reasonable care could have been expected to have known that the vehicle had been modified.

Therefore my conclusion is that this wasn't a qualifying representation and Watford wasn't entitled to take the action it did.

Having decided that Mr H did take reasonable care not to make a misrepresentation I don't need to go on to consider whether Watford has shown that without the misrepresentation it wouldn't have entered into the contract (provided the policy) at all, although I accept that Watford has provided evidence to show this.

In order to put things right, Watford should put Mr H back in the position he would have been in had the decision been that this wasn't a qualifying misrepresentation and the policy hadn't been avoided. This means Watford should settle the claim in line with the remaining policy terms and conditions. This is the fair and reasonable outcome in the circumstances.

In addition I accept that the difficulties with the claim have caused Mr H distress and inconvenience, and I think that Watford should pay him £100 in recognition of this.

My final decision

For the reasons given above I uphold Mr H's complaint. I require Watford Insurance Company Europe Limited to reinstate Mr H's policy and settle his claim in accordance with the remaining policy terms and conditions. If this involves making a payment to Mr H I

require Watford Insurance Company Europe Limited to add interest at 8% simple from the date it should have settled the claim to the date the payment is made. If Watford Insurance Company Europe Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

I also require Watford Insurance Company Europe Limited to amend its records and any central/external databases to make sure any record of the avoidance or cancellation of the policy is removed

I also require Watford Insurance Company Europe Limited to pay Mr H £100 compensation in recognition of the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 October 2024.

Sarah Baalham
Ombudsman