DRN-5096136

The complaint

Miss A has complained that Watford Insurance Company Europe Limited cancelled her motor insurance policy and refused to pay her claim.

What happened

Miss A took out a motor insurance policy with Watford through an online price comparison site. When her car was damaged in an incident, she made a claim on her policy. Watford declined her claim, cancelled her policy, kept the premiums she'd already paid and asked for payment of the remaining premium.

When Miss A complained, Watford said she'd answered the question she'd been asked about a named driver's driving history incorrectly. And that it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid her policy and refuse her claim.

our investigator's view

Miss A brought her complaint to us, and our Investigator thought it should be upheld in part. She agreed there had been a qualifying misrepresentation. But she didn't think this was deliberate or reckless. She believed it was careless, and that Watford was entitled to cancel the policy and decline the claim. But she said Watford should refund Miss A's premium.

Watford didn't agree with the Investigator and asked for an Ombudsman's decision. It said it would refund the premium Miss A had already paid but would deduct its claim costs from this amount. Miss A was unhappy with the amount of the refund.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Miss A and to Watford on 18 October 2024. I summarise my findings:

I could understand that Miss A felt frustrated that her claim was declined after her car was deemed to be a total loss. She explained that this has left her in a poor financial position. And I was sorry to hear this.

I was 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. But it must refund the premium.

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 thought Miss A failed to take reasonable care not to make a misrepresentation when she stated in her application via a comparison site that a named driver had had no claims or incidents within the previous five years. And I looked at the question she was asked when she completed the application and I agreed she failed to take reasonable care. This was because she was asked if she or any named driver in the last five years

"…had or caused any accidents, claims or damage involving any motor vehicle (including car, motorbike or van) even if no claim was made and regardless of blame".

And I thought this was a reasonably clear question asked by Watford through the comparison site Miss A used. Miss A stated that she had three claims. But she answered "No" for the named driver. Miss A said she had asked the named driver if he had made any claims. But the named driver had been involved in two incidents in the previous five years that should have been disclosed.

And I thought this meant Miss A failed to take reasonable care not to make a misrepresentation when she said the named driver had no claims or incidents within the previous five years.

Watford provided evidence from its underwriting guide which showed that if Miss A had not made this misrepresentation it would not have provided cover at all. This meant I was satisfied Miss A's misrepresentation was a qualifying one under CIDRA.

I also thought Miss A's misrepresentation wasn't a reckless or deliberate misrepresentation. This was because I didn't think Watford had shown that Miss A knew about these incidents and chose not to disclose them. I thought Miss A did ask the named driver about claims, though not incidents. And Miss A took care to provide information about her own claims and the other information about the named driver. And so I was satisfied Miss A's misrepresentation was careless.

Where a qualifying careless misrepresentation has been made and the insurer wouldn't have been able to offer insurance had the correct information been provided, the insurer can avoid the policy and refuse claims, but it must return the premium.

But Miss A's misrepresentation was about the named driver's information. Where the misrepresentation was deliberate or reckless, we're unlikely to say the avoidance is unfair. But where the misrepresentation was careless, we often don't think this is fair.

This is because under CIDRA if the misrepresentation was careless, the insurer can only avoid the contract if it wouldn't have offered it on any terms. And Watford said it would have offered a policy to Miss A without the named driver, but it was unable to state on what terms or at what rate. But I didn't think Miss A should be penalised by this.

Watford isn't entitled to avoid Miss A's policy under CIDRA. So I couldn't say that it was fair for Watford to not remove the named driver and amend the policy terms or that it was fair for it avoid or cancel the policy.

And so I thought Watford should amend the terms of the policy by removing the named driver and deal with Miss A's claim following the accident. And, as Miss A has been without her money for some time, I thought it should add interest to any settlement it made from the date the claim was declined to the date of settlement. The unfair cancellation and refusal of

her claim has caused Miss A significant upset and worry. And so I thought Watford should pay her £250 compensation for this, in keeping with our published guidance.

And – as CIDRA reflects our long-established approach to misrepresentation cases, I thought not allowing Watford to rely on it to avoid Miss A's policy produced the fair and reasonable outcome in this complaint.

Subject to any further representations from Miss A and Watford, my provisional decision was that I intended to uphold this complaint.

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.

Miss A replied that she had defaulted on her car finance payments after her insurance had been cancelled and this was preventing her from obtaining a mortgage. But whilst I was sorry to hear this, I can't reasonably hold Watford responsible for Miss A's financial arrangements with another company.

Watford replied that it thought my provisional decision was unreasonable. It said that had Miss A provided the correct information, then the insurer wouldn't have offered a policy. It said it would refund the premium but not deal with the claim.

But Watford has told Miss A that it would have offered her cover without the named driver on the policy. And, as I'm satisfied that the misrepresentation was careless, then under CIDRA Watford can only avoid the contract if it wouldn't have offered it on any terms. And so I'm satisfied that in order to be fair and reasonable it must amend the terms of the policy by removing the named driver and deal with Miss A's claim following the accident.

Watford also said it hadn't done anything wrong that warranted compensation. But, as I've stated above, the unfair cancellation and refusal of her claim has caused Miss A significant upset and worry over six months. And so I think it's fair and reasonable that Watford should pay her £250 compensation for this, in keeping with our published guidance.

And so I've considered the further representations, but they haven't provided any further evidence to persuade me to change my provisional decision.

Putting things right

I require Watford Insurance Company Europe Limited to do the following:

1. Amend the terms of Miss A's policy by removing the named driver and deal with Miss A's claim following the accident, adding interest to any settlement at the rate of 8% simple per annum from the date the claim was declined to the date of settlement.
2. Pay Miss A £250 compensation for the distress and inconvenience caused by its unfair cancellation of her policy and refusal to deal with her claim.

†If Watford considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss A how much it's taken off. It should also give Miss A a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require Watford Insurance Company Europe Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 19 November 2024.

Phillip Berechree
Ombudsman