

The complaint

Mr O complains about Watford Insurance Company Europe Limited's (Watford) decision to avoid his policy following a claim he made.

What happened

Mr O held a motor insurance policy underwritten by Watford. He made a claim in August 2023 after his car was stolen. Watford say that during its consideration of the claim, it became apparent Mr O had made a misrepresentation when he bought the policy. Watford says Mr O failed to disclose a SP50 motor conviction from May 2022.

Watford says Mr O was required to declare all speeding offences in the last five years when taking out the policy. But he only declared three of his four offences. Watford says, had it known about all of Mr O's motoring offences beforehand, it wouldn't have offered cover for Mr O's car. Watford avoided Mr O's policy and retained his annual premium.

Mr O was unhappy with this and made a complaint to Watford. Mr O said he disclosed all his motor offences when he bought the cover. He says the SP50 motoring conviction that Watford says he failed to tell it about wasn't something he was aware of until April 2023 - after the policy started. Mr O says he told Watford of all his motor penalties at the time he bought the cover.

Watford initially accepted Mr O's comments. But later it maintained its position that Mr O had made a misrepresentation. It also said Mr O received a TT99 conviction notice in April 2023, which meant he was disqualified from driving. And under the policy terms Watford says Mr O was required to notify it of this. He didn't and had he done so, it says it would have cancelled the policy.

Mr O brought his complaint to this Service. Our Investigator looked into it and didn't think Watford had acted unreasonably towards Mr O.

Mr O disagreed and asked for an ombudsman to review the complaint.

I issued a provisional decision on Mr O's complaint. This is what I said about what I'd 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 the parties that although I've only summarised the background to this complaint, so not everything that has happened or been argued is set out above, I've read and considered everything that has been provided.

Misrepresentation

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, reckless, or careless.

*Watford thinks Mr O failed to take reasonable care not to make a misrepresentation when he stated in his online application that he had three speeding offences. I've looked at the questions Mr O was asked when he completed the application. The question relating to convictions says "in the last five years has the driver received any motoring convictions, driving licence endorsements or fixed penalties?" The question also included an additional statement that said "this includes any **pending prosecutions** or if you've been **disqualified from driving**."*

Watford says Mr O failed to disclose a SP50 offence from May 2022. Mr O says he wasn't aware of the motoring offence until April 2023 when he received notification of a TT90 informing him he was disqualified from driving due to 'totting up' 12 points on his license.

I've considered the government guidance on how an individual is notified of a speeding conviction. In short, it explains that the alleged offender will be notified, whether verbally or in writing, around the time of the offence. So, it seems more likely than not Mr O was notified of the SP50 offence before the policy started. Mr O says he wasn't convicted of the offence until after he bought the cover. But the question did prompt him to provide information relating to "pending prosecutions". So I'm satisfied the question was clear on what Mr O needed to disclose.

Mr O says he was unwell for most of 2022, which meant he wasn't opening post around the time he received the SP50 motoring offence. And he says this is one of the reasons why he wasn't aware of it. Whilst I don't dispute Mr O's comments, I can see he told Watford of a SP30 offence that he received the same time as the SP50 offence. So I don't think his circumstances at the time prevented Mr O from notifying Watford about it. And I think Mr O should have declared the fact he had a pending SP50 motoring offence when he bought the cover. It follows, I don't think Mr O took reasonable care when answering the question at the time he bought the policy.

Watford say if Mr O had informed it of the SP50 motoring offence it wouldn't have offered him the policy. It has provided our Service with its underwriting criteria showing it wouldn't have offered cover. But the evidence I've seen show's Watford wouldn't have offered Mr O cover if he was disqualified from driving. At the time he applied for the policy he wasn't disqualified from driving. That didn't happen until April 2023, several months after the policy had started.

Although I'm satisfied Mr O failed to take reasonable care when disclosing his motoring convictions, Watford hasn't provided this Service with anything to show what it would have done had Mr O disclosed the pending SP50 when he bought the policy. Based on what I've seen, Watford hasn't given me anything to show it would have done anything differently based on the underwriting criteria it has provided to our Service. It follows, I can't say there's been a qualifying misrepresentation per CIDRA.

Mid-term changes

Watford says Mr O should have told it he'd been disqualified from driving when he received his disqualification notice in April 2023. Had he done so, it says it would have cancelled the policy due to the change in risk. And, therefore, Mr O wouldn't have had cover through Watford when his car was stolen.

Section 18 of the policy booklet "changes which may affect your cover" explains "The Terms of Your Policy and premium are based on the information you have given us. If any of this information changes You must notify Us by calling Your broker."

The policy booklet says a policyholder must tell Watford immediately if "...you or any insured driver's driving license is revoked either temporarily or permanently..."

However, I think this is a significant ongoing duty towards Mr O and, if Watford wishes to rely on such a term, I would expect it to have highlighted this outside of the terms of the policy. Insurers will generally do this in a policy summary or an "insured product information document". But I can't see that Watford has brought this requirement to Mr O's attention. So I don't think Watford has done enough to ensure Mr O was aware he needed to inform Watford his driving license had been revoked. Had it done so, it's more likely than not Mr O would have told Watford about it. So I don't think it's fair for Watford to rely on this term when considering Mr O's claim.

Based on what I've set out above, I'm not persuaded Watford would have done anything differently had Mr O made it aware of the SP50 offence when he bought the policy. And I can't agree there's been a qualifying misrepresentation per CIDRA. I also can't agree the requirement for Mr O to disclose his motor disqualification mid-term was made clear to him. And if it was, it seems likely Mr O would have told Watford about it. Therefore, Watford should reassess the claim in line with the remaining policy terms.

Watford has been inconsistent in the way it handled Mr O's claim. It initially accepted the claim then later changed its mind citing different reasons for why it refused to settle the claim. I think the service Watford provided to Mr O fell short of the expectations I'd expect to see - which would have caused undue trouble and upset to Mr O. So I think Watford should pay Mr O £200 in compensation for the way it handled things - and the impact this had on Mr O.

My provisional decision

For the reasons I've set out above, subject to either party providing more information, I am minded to require Watford Insurance Company Europe Limited to settle Mr O's complaint as follows:

1. Remove all record of the policy avoidance/cancellation from internal and external insurance databases;
2. Reinstate the policy and reconsider Mr O's claim in line with the remaining terms of the insurance policy; and
3. Pay Mr O a total amount of £200 in compensation.

The responses to my provisional decision

I invited both Watford and Mr O to respond to my provisional decision.

Watford responded saying Mr O was issued with a Notice of Intended Prosecution (NIP) when he received the SP50 motoring offence in May 2022. So he would have been aware of

the TT99 ban from totting up points on his license before he applied for cover. Watford says Mr O knew he'd likely be disqualified from driving at the point he purchased the policy. And if Mr O informed Watford of the 'pending' ban, it wouldn't have offered him cover.

Watford also explained Mr O had an obligation under the policy to inform it, or the broker, of any changes that may affect the policy. And it made this requirement clear to Mr O in the policy documentation it sent Mr O when he bought the cover. Watford says Mr O failed to inform it or the broker of his driving ban and had he done so, it would have cancelled the policy.

Mr O didn't respond to my provisional decision.

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've carefully considered Watford's submissions. As I set out in my provisional decision I'm satisfied Mr O failed to take reasonable care when answering the questions around motoring offences during the purchase of the policy. But in order for me to agree there's been a qualifying misrepresentation in line with CIDRA, Watford must show it would have offered the policy on different terms or not at all if Mr O hadn't made the misrepresentation.

Watford has provided this Service with its underwriting criteria showing it wouldn't have offered Mr O cover if he *was* disqualified from driving (at the time he bought the cover). The underwriting criteria shows Watford don't offer cover to disqualified drivers - but it stays silent on what it does for customers with pending convictions. Mr O wasn't disqualified at the time he applied for cover, he was still pending prosecution. He wasn't disqualified until April 2023 - after the policy went ahead. So I haven't seen anything to show Watford would have acted differently had Mr O disclosed he had another pending motoring offence and disqualification. It follows I can't say there's been a qualifying misrepresentation.

I've also considered the documentation Watford has provided, which it believes demonstrates it made Mr O reasonably aware he needed to inform it of any motoring convictions during the term of the policy. Watford has referred to the Insurance Product Information Document (IPID) and the welcome letter Mr O received when he bought the cover.

The IPID for Mr O's motor policy says, *"you must let your broker know if there are any changes to your personal details or changes to your car"*. I don't think this wording is sufficient enough to highlight the ongoing duty Mr O had under the policy terms to disclose his driving license had been revoked.

The relevant section of the welcome letter says *"you must therefore provide complete and accurate information to us at all times including when arranging your insurance and throughout the lifetime of any policy. Any change in your circumstance or the risk itself, such as changing occupation or receiving endorsements on your licence must be notified to us immediately..."*

Whilst I accept the wording is clear around what a policyholder must do if they receive any endorsements on their licence, Watford must also demonstrate the potential consequence of not doing so - that the policy may be avoided or a claim refused. I'm also mindful the wording Watford has relied upon is on page four of a 14 page welcome pack. And it's not set out with any prominence. So I don't think the notification that Watford says it gave Mr O on the need to provide it with any change in circumstances, including notifying it of any convictions is

significantly prominent given the on-going duty the policy places on Mr O. Had it sufficiently highlighted this requirement, I think on balance Mr O would have notified it about it. So it follows, I think Watford should re-assess the claim in line with the remaining policy terms.

My final decision

For the reasons set out above my final decision is I uphold this complaint. Watford Insurance Company Europe Limited is directed to:

1. Remove all record of the policy avoidance/cancellation from internal and external insurance databases;
2. Reinstate the policy and reconsider Mr O's claim in line with the remaining terms of the insurance policy; and
3. Pay Mr O a total amount of £200 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 6 December 2024.

Adam Travers
Ombudsman