DRN-5511044

The complaint

Mrs S complains that Watford Insurance Company Europe Limited ('Watford') voided her motor insurance policy and didn't pay her theft claim.

Mrs S has been represented by a family member during this complaint. But for ease of reading, any reference to 'Mrs S' includes submissions made by her representatives.

What happened

Mrs S took out a motor insurance policy underwritten by Watford in August 2023 for herself and a named driver. In September 2023, Mrs S reported that her vehicle had been stolen.

Watford considered the claim but ultimately declined it and voided the policy. They said this was because while Mrs S hadn't disclosed that her named driver had an unspent criminal conviction. And they said if they had known about this conviction, they never would have offered to cover her at all. Watford also retained the premiums she had paid, as they said she'd answered the question recklessly.

Mrs S thought this was unfair and complained to Watford. She explained that she'd understood the question around an "unspent conviction" to refer to the time that was yet to be spent in custody. And because her named driver had served his required time in custody for his conviction – she answered 'no' to the question. Mrs S said she had no doubts at the time of purchasing the policy that the term "unspent conviction" could have meant something else, so she didn't think to make any further enquiries.

Watford considered the complaint but didn't uphold it. They said information had been provided as to what a spent conviction was, and Mrs S should have checked what this meant before answering the question. And they said any prison sentence of more than four years would never be considered spent. Mrs S remained unhappy with Watford's response to her complaint – so, she brought it to this Service.

An Investigator looked at what had happened and ultimately thought the complaint should be upheld in part. He said that while he agreed Mrs S had made a misrepresentation – he thought it would be classed as careless rather than reckless. He said this was because Mrs S may not have understood what the term "spent conviction" meant; and also, that her testimony was that she didn't recall seeing the button that could be clicked to receive further clarification on what this meant.

The Investigator concluded that as he considered the misrepresentation to be careless, the remedy available to Watford would be to void the policy if they could show they never would have offered cover. But as cover was only declined due to the named driver's criminal conviction, the Investigator said Watford should amend the policy to remove the named driver and then reconsider the claim based on the remaining terms.

Both Watford and Mrs S disagreed with the Investigator's findings. Watford's submissions were:

- It would not be reasonable to assume someone is unable to understand the questions asked when seeking motor insurance cover.
- Mrs S had presumed what she considered "spent" to mean and had chosen not to check whether this was correct.
- Additional information on what "spent" meant was readily available. And while Mrs S said she did not remember seeing this – it was there.

Mrs S' response to the Investigator's findings were:

- She maintained that she had taken reasonable care when answering the questions given her genuine belief of what the question was referring to.
- Insurance Companies have a duty to ensure that the questions are clearly stated. And since the nature of the question in dispute involved legal terminology, which could be mistaken to mean something else, the specific question should have clearly stated in brackets what it specifically meant or referred to.
- The most appropriate outcome should be that the full claim should be paid by Watford.

Both Watford and Mrs S asked for an Ombudsman to consider the complaint – so, it's 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've reached the same overall outcome as the Investigator, for broadly the same reasons.

Watford have said Mrs S had made a misrepresentation when taking out her policy with them. So, 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 take reasonable care, and does make a misrepresentation, 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 they would have offered the policy on different terms - or not at all - if the consumer hadn't made the misrepresentation.

CIDRA sets out several considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer for a qualifying misrepresentation under CIDRA depends on whether it was deliberate or reckless, or careless. So, I think the principles set out in CIDRA are relevant and it's fair and reasonable to apply these principles to the circumstances of Mrs S' claim. And that means I need to first consider whether Mrs S took reasonable care not to make a misrepresentation when she took out the policy. When considering whether a consumer has taken reasonable care, I need to decide whether the questions they were asked were clear. The relevant question asked was:

> "*Does this driver have any unspent non-motoring convictions?"*

There was a button next to this question that could be clicked to gain further information which stated:

> *"Non-motoring criminal convictions*
>
> *Convictions considered to be spent under the Rehabilitation of Offenders Act 1974 DO NOT need to be disclosed as they can effectively be ignored after a specified period of time. However, if you've received a prison sentence of more than four years your conviction will never become spent. If you're unsure, you can use Unlock's criminal record disclosure calculator (www.disclosurecalculator.org.uk) to work out whether your convictions are spent*

Mrs S answered 'no' to this question. She's said this was because she'd understood the question around an "unspent conviction" to refer to the time that was yet to be spent in custody. And she said she had no doubts at the time of purchasing the policy that the term could have meant something else.

I can understand why Mrs S feels frustrated by Watford's decision. She's explained that this was an honest oversight that will have significant consequences for her. And I was naturally sorry to hear this. However, it's important for me to outline that the test under CIDRA as to whether Mrs S took reasonable care is one of a reasonable consumer, not one unique to Mrs S. This means I must consider what I think a reasonable person would have answered when asked the question she was asked.

Having looked at the question asked, I'm satisfied it was clear enough to prompt a reasonable consumer to understand what Watford wanted to know. I've taken on board Mrs S' submissions around what she understood the term to mean, but there was clear explanatory information available to outline what an "unspent conviction" was – and I think a reasonable consumer would have been able to use this information to ensure the answers they were giving were accurate. I'm therefore satisfied that Watford have demonstrated a misrepresentation occurred when Mrs S took out the policy.

I've noted Mrs S' submissions that Watford should have checked if the details she'd provided were correct – but I don't find this to be something I can fairly agree with, because doing so ignores the duty CIDRA placed on her to take reasonable care when entering a contract of insurance. This also isn't something I'd expect an insurer to do for every consumer applying for a policy and it doesn't negate Mrs S' obligation to provide correct information.

Turning to whether the misrepresentation was qualifying - Watford have provided evidence which shows that, if they had known about the named driver's conviction, they wouldn't have provided cover, as it's not within their risk appetite to provide cover in these circumstances. Having considered this evidence, I'm satisfied it shows the misrepresentation was qualifying under CIDRA.

So, I think Watford is reasonably entitled to apply the relevant remedy available to them. Watford have classed Mrs S' qualifying misrepresentation as reckless – which CIDRA says is a misrepresentation which the consumer *"did not care whether or not it was untrue or misleading".* Under CIDRA, a reckless qualifying misrepresentation means they're entitled to avoid the policy, refuse any claims, and retain the premiums paid. CIDRA says that it is for the insurer to show that a qualifying misrepresentation is deliberate or reckless.

Watford have said this is demonstrated here because Mrs S had presumed what she considered "spent" to mean and had chosen not to check whether this was correct. And they said her named driver would have known whether his conviction was spent or not. But based on the evidence I've seen, I don't think that Watford can demonstrate the qualifying

misrepresentation was reckless, in that Mrs S didn't care whether the answer she gave was true or not. I say this for two main reasons in respect of the submissions made by Watford.

The first reason is that I do not consider that any weight can be given to knowledge anyone other than Mrs S had when taking out the policy. I note that Watford has said her named driver would have known whether his conviction was spent or not within the meaning they gave – but this is not the relevant test under CIDRA so I can't fairly attach Mrs S' named driver's knowledge to her.

The second reason is that, based on Mrs S' testimony, I'm persuaded she had a belief in what she disclosed and had at least given it some thought. And this means I don't think Watford can demonstrate Mrs S didn't care about the information she was giving them to show she acted recklessly. It follows that I think it would be reasonable to class the qualifying misrepresentation as careless.

The remedy available to Watford under CIDRA for a qualifying careless misrepresentation says that they can avoid the policy where they wouldn't have offered cover at all. But Watford have not provided any evidence to show they wouldn't have provided cover to Mrs S alone without including the named driver.

This Service's approach in situations like this is that, where a qualifying misrepresentation was deliberate or reckless, we're likely to say it's fair for the insurer to avoid the policy. But where the misrepresentation was careless, we often don't think this is fair. And where we think an insurer wouldn't have insured the named driver, but would have still insured the policyholder, they can't avoid the policy. Instead, they should amend the terms by removing the named driver from cover.

Putting things right

Watford should rewrite the policy from inception with Mrs S as the sole policyholder and recalculate the premiums due. If a lower premium is due, then Watford should refund the difference. And if a higher premium is due, they should then consider the claim against the adjusted premium and can proportionally settle the claim, in line with CIDRA. They should also remove all records of the avoidance from external databases.

I appreciate Mrs S has said a proportional settlement wouldn't be fair, and the most appropriate outcome should be that the full claim should be paid by Watford. But I don't agree this would be a fair and reasonable outcome. I say this because the remedy I have outlined above is one that is provided under the relevant statutory law. And as CIDRA reflects our long-established approach to misrepresentation cases, I'm satisfied following it produces a fair and reasonable outcome in this complaint.

My final decision

For the reasons given above, my final decision is that I uphold this complaint in part. I direct Watford Insurance Company Europe Limited to carry out the redress set out in the 'putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 26 June 2025.

Stephen Howard
Ombudsman