

The complaint

Mr K complains that Accredited Insurance (Europe) Ltd unfairly avoided his van insurance policy and turned down his claim.

What happened

Mr K took out an insurance policy with a broker through an aggregator site. When the policy was due for renewal the broker wrote to Mr K with the details of the renewal. Mr K called the broker to ensure he could drive other vehicles and another policy was set up with Accredited.

Mr K was involved in an accident and claimed on his policy. Accredited then inspected his van and discovered it had modifications which they weren't aware of. Because of the modifications Accredited said it wouldn't have offered Mr K cover, and so avoided his policy and kept the premium, as they thought the misrepresentation was deliberate.

Mr K didn't think this was fair and complained, he said he had insured the van through a website which said it covered modified vans. He also said when he called his broker he hadn't been asked about any modifications. As Mr K wasn't happy with his policy being declined and the actions of the broker, he referred his complaints here.

Our investigator reviewed this complaint and didn't recommend it be upheld. She found that when Mr K had taken the policy out through the aggregator website, he'd agreed to a disclaimer which said his van wasn't modified. Then when his policy was renewed the documentation also showed his van wasn't modified. She also found that Accredited wouldn't have covered Mr K if they had known about the modifications. However she thought this was a careless mistake by Mr K and therefore didn't think Accredited had been unfair in avoiding his policy, but recommended they refunded the premium charged, plus 8% simple interest to compensate him for not having the money.

Accredited disagreed and said they thought the misrepresentation was deliberate, as Mr K had opportunities to correct the error and didn't. But agreed to refund the premiums along with 8% simple interest. Mr K didn't agree, he said his broker had made an error by not asking him about modifications and not telling Accredited his van was modified.

As Mr K didn't agree the complaint has come 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.

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 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. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Accredited thinks Mr K failed to take reasonable care not to make a misrepresentation when he took out his policy with them and when he took out his previous policy with another insurer. They said this is because Mr K didn't disclose that his van was modified. I've looked at the information Mr K gave when he originally took out his policy through the aggregator site and also what information he was provided with when his policy renewed. This is because the renewal information was based on the information when he took out his previous policy.

When Mr K originally took out the first policy, using an aggregator website. He agreed to a list of assumptions. One of the assumptions says:

"Your vehicle has not been modified in any way from the manufacturer's standard specification."

At the top of the assumptions it asks for them to be checked and if any aren't correct to then amend them with the insurer before buying the policy. As Mr K had agreed to the assumption his van wasn't modified, when his policy renewed with Accredited it was based on the information previously provided.

I can see the statement of fact which was issued before this policy started says:

"Has the vehicle been changed in anyway from the manufacturer's standard specification?"

Next to this question it says "No". Mr K agrees his van is modified and therefore this should have been marked as "Yes". I'm therefore satisfied that Mr K has failed to take reasonable care not to make a misrepresentation when taking out this policy. I've considered Mr K's points about previously declaring the modifications and that he feels he's been misled by the aggregator website and that the broker didn't accurately record about his modifications. In particular by not asking about them when he called before taking out this policy. However, in this decision I can only comment on the actions of Accredited. If Mr K is unhappy with the aggregator site and broker then he would need to raise those issues with them.

The documentation provided to Accredited said Mr K's van wasn't modified and they've shown if Mr K had answered this question correctly, they wouldn't have offered him cover. This means I'm satisfied Mr K's misrepresentation was a qualifying one.

Accredited have said Mr K's misrepresentation was deliberate but have now agreed to refund the premiums as if it was careless. I disagree with Accredited that Mr K's misrepresentation was deliberate. Accredited have now agreed to treat Mr K's misrepresentation as if it was careless, rather than deliberate or reckless by agreeing to refund his premium along with 8% simple interest per annum, to compensate him for not having the money. Given Mr K's comments on the misrepresentation I'm satisfied it's fair and reasonable to treat it as a careless one.

As I'm satisfied Mr K's misrepresentation should be treated as careless, I've looked at the actions Accredited can take in accordance with CIDRA. As Accredited has shown they wouldn't have offered cover at all, they are able to avoid his policy and not cover any claims but need to return the premium to him.

My final decision

For the reasons explained above I partly uphold this complaint. I require Accredited Insurance (Europe) Ltd to refund Mr K's premium, along with 8% simple interest per annum, calculated from the date of avoidance until the date it makes payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 March 2022.

Alex Newman
Ombudsman