

The complaint

Mr W has complained that AXA Insurance UK Plc avoided (treated it as if it never existed) his motor insurance policy and refused to pay his claim.

What happened

Mr W took out a motor insurance policy with AXA through an online price comparison site. When he was involved in an accident with another driver, he tried to claim on his policy. AXA declined his claim, avoided his policy and refunded the premiums he'd already paid. When Mr W complained, it said he'd answered the question he'd been asked about modifications to his car incorrectly. And that it considered this to be a qualifying misrepresentation, which entitled it to avoid his policy and refuse his claim.

Mr W brought his complaint to us and our Investigator thought it shouldn't be upheld. She agreed there had been a qualifying misrepresentation. And she thought AXA wouldn't have offered cover without the misrepresentation. So she said AXA was entitled to avoid the policy and decline the claim.

Mr W doesn't agree with the Investigator and has asked for an Ombudsman's decision. He said the modification, a wrap to protect the paintwork, didn't affect his car's performance. And he thought it wasn't made clear that the wrap was a modification.

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 can understand that Mr W feels frustrated and stressed by AXA's decision about his policy and the claim. Mr W has told us about the financial impact on him of AXA's decision. And I can see that its decision to decline the claim will have a significant cost for him, and the avoidance will mean that future insurance costs will increase.

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 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.

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.

AXA thinks Mr W failed to take reasonable care not to make a misrepresentation when he stated in his application via a comparison site that his car didn't have any modifications. And I've looked at the question he was asked when he completed the application and agree he failed to take reasonable care.

This is because he was asked "*Does the car have any modifications?*". A help box provides assistance to answer the question correctly:

"Modifications are non-standard changes made to the car after manufacture, including new spoilers, alloy wheels etc".

If the question was answered "Yes", a list of possible modifications was provided. This included "Exterior decorative changes" under "Body modifications". And I think this was a clear question asked by AXA through the comparison site Mr W used.

Mr W chose "No" in answer to the question and he's explained that this was because he thought the vinyl wrap he'd added didn't change the car but just protected its paintwork. But I think the vinyl wrap is a modification as it is a non-standard change made after manufacture. And I think this means Mr W failed to take reasonable care not to make a misrepresentation when he said his car didn't have any modifications.

AXA then provided Mr W with his policy documents and asked him to make sure his information was correct at all times. The policy schedule said that the car had no modifications and provided AXA's definition of modifications:

"Any modification which change the maker's standard specification including cosmetic changes or manufacturer's options."

But Mr W didn't then notify AXA that the car had a vinyl wrap.

AXA has provided evidence which shows that if Mr W had not made this misrepresentation it would not have offered a quote for cover at all. This means I am satisfied Mr W's misrepresentation was a qualifying one under CIDRA.

AXA refunded Mr W's premiums in full. So it has treated the misrepresentation as careless. I think that's fair and reasonable in the circumstances as I haven't seen evidence that Mr W deliberately misrepresented the modification.

Therefore, I'm satisfied AXA was entitled to avoid Mr W's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, AXA does not have to deal with his claim following the accident. And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing AXA to rely on it to avoid Mr W's policy produces the fair and reasonable outcome in this complaint.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 September 2022.

Phillip Berechree
Ombudsman