

## **The complaint**

Mr H complains that AXA Insurance UK Plc (AXA) declined his claim following an accident when driving his car and avoided (treated it as though it never existed) his motor insurance policy.

## **What happened**

In June 2022 Mr H was involved in a car accident. He reported the matter to AXA. The car was considered a total loss by its engineer, who also identified the car had a vinyl wrap. AXA subsequently wrote to Mr H to decline his claim and confirm his policy was to be avoided back to inception.

In its letter AXA says Mr H had failed to declare a modification when he purchased his insurance policy in November 2021. It says had he answered the questions he was asked accurately it wouldn't have offered him cover. AXA told Mr H his policy would be declared void on 23 June 2022 and his premium would be refunded in full.

AXA says Mr H told it he'd bought the car as it was and hadn't added the wrap himself. Also, that he later told it the wrap was limited to the bumper, and that this was temporary until he could afford to pay someone to remove it. AXA says it has seen images from Mr H's social media accounts that show the colour of the car changed some months after the policy was taken out.

Mr H didn't think AXA had treated him fairly and so contacted our service. Our investigator didn't uphold his complaint. He was satisfied Mr H had misrepresented information about his car. He says AXA has shown it wouldn't have offered cover had it been aware of the vinyl wrap.

Our investigator says the relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act 2021 (CIDRA). In these circumstances he thought AXA had behaved fairly in avoiding Mr H's policy and refunding his premium in line with the CIDRA rules.

Mr H didn't agree and asked for an ombudsman to consider his complaint.

It has been passed to me to decide.

I issued a provisional decision in April 2022 explaining that I was intending to uphold Mr H's complaint. Here's what I said:

### *provisional findings*

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*We asked AXA to provide the questions Mr H was asked when he purchased his insurance policy online. I can see he was asked, "Does the car have any modifications?". Mr H*

responded, "No".

*I've read Mr H's policy schedule and his terms and conditions booklet. The policy schedule confirms that no modifications had been declared by Mr H. This section explains that a modification is anything that changes the makers standard specification including cosmetic changes or manufacturer's options.*

*The policy terms say that Mr H must advise of any changes that occur during the policy period. This includes a section under the General Conditions heading, that reiterates the information about notifying AXA of any alterations or modifications from the standard UK specification.*

*I think it's clear that Mr H didn't advise AXA of a modification at the inception of his policy. But it's also clear he's expected to provide accurate information. This includes notifying AXA of any modifications that are made to his car during the policy year.*

*I've examined the photos AXA has supplied with its engineer's report. This shows the main body of the car is white, with the rear bumper and boot a green/blue colour. The front bumper has been severely damaged and isn't visible in the photos. From the images AXA obtained from Mr H's social media accounts, his entire car was a blue/green colour in 2021. This colour then changes at some point, prior to the accident, to the white body and green/blue bumpers and boot.*

*Based on this evidence I'm satisfied Mr H's car changed colour after he bought his insurance policy. AXA confirms its engineer found this was due to a wrap that had been added.*

*AXA's approach to this case appears somewhat confused. It has sought to avoid Mr H's policy back to inception relying on the CIDRA rules. However, this requires Mr H to have misrepresented information to AXA when he bought the policy. In its submissions to our service AXA says Mr H added the wrap after his insurance policy commenced. I agree this is what the evidence shows. This means Mr H didn't misrepresent information when his policy was inceptioned, as there was no modification on his car at this time.*

*I've thought about what actions the policy terms allow AXA to take here.*

*The agreement between Mr H and AXA requires that he notifies it of any modifications that are made, to his car, during the term of his policy. The terms say that if Mr H tells AXA about a change, it will assess how it affects his policy. This could mean an additional premium or could mean AXA can no longer offer cover.*

*I'm satisfied that a modification was made to Mr H's car within the policy year, and that he didn't tell AXA about this. In failing to do so Mr H wasn't acting according to the terms of his agreement.*

*In certain circumstances it might be reasonable for an insurer to vary, or cancel, the terms of an insurance policy, but this can only be when the nature of the risk changes fundamentally. When an insurer issues a policy of insurance, they effectively agree to cover the policyholder against certain contingencies. Generally, if a policyholder's circumstances change during the term of the policy, we see that as part of the general risk that insurers take on. I wouldn't therefore expect an insurer to cancel a policy mid-term for changes which are not fundamental.*

*A fundamental change to a policy would be something that significantly changes the risk for the insurer, such as a change of car, or a significantly larger engine. AXA hasn't said why the modification to Mr H's car increased the risk posed, other than to point to its underwriting*

*criteria that shows this isn't something it's prepared to cover. I don't think that what is essentially a cosmetic change, represents a significant difference to the nature of the risk.*

*Having thought carefully about this, I don't think it was fair or reasonable for AXA to rely on a change of risk to either avoid or cancel the policy. Because of this it should reconsider Mr H's claim under the remaining terms of his policy without reliance on the modification clause to deny it. In the event a settlement payment is provided AXA should add 8% simple interest from the date of the claim until the payment is made.*

*AXA should ensure that any record of the avoidance is removed from any internal and external data bases. It should also provide a letter to Mr H explaining the avoidance was carried out in error. He can show this to any current or future insurer to ensure premiums are calculated fairly.*

*I've thought about the impact all of this has had on Mr H. Avoiding his policy and not considering his claim has meant that he has been inconvenienced and left out of pocket. This must have caused distress and inconvenience. I think it's fair that AXA pays Mr H £250 to acknowledge this.*

I said I was intending to uphold Mr H's complaint and AXA should:

- reconsider the claim without reliance on the modification clause, if this results in a settlement payment it should pay 8% simple interest from the date of the claim until this payment is made \*If AXA considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate;
- provide Mr H with a letter confirming the avoidance was completed in error; and
- pay Mr H £250 compensation

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Mr H responded to confirm that he didn't have a wrap on the car at the time he insured it with AXA.

AXA responded to say it considers the vinyl wrap was a fundamental change for two reasons. Firstly, it says the modification makes the vehicle more expensive for it to repair in the event of an accident. It says as this is on the surface of the vehicle it will likely be affected in the event of any accident. AXA says even minor damage could result in an expensive replacement of the entire wrap.

The second point AXA made is that a wrap is not in the list of acceptable modifications it covers. It says the modification changes the vehicle so that it's no longer insurable. AXA says its policy wording around modifications is very clear, which it says isn't disputed in my provisional decision.

AXA refers to its policy wording that sets out what isn't acceptable. Also, its term that requires Mr H to inform it of changes to his vehicle as soon as he possibly can. AXA says its policy wording confirms a customer may be given the option of paying an additional premium. But this only applies if the change was still an acceptable risk under the policy. It states that a wrap is not an acceptable risk.

AXA concludes its response to say it feels declining the claim is the correct decision here as Mr H failed to disclose the vinyl wrap and breached the terms of his policy.

### **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 acknowledge Mr H's comments. However, this doesn't change my understanding of what occurred and doesn't warrant a change to my findings.

I've thought about AXA's comments that the addition of the vinyl wrap constitutes a fundamental change to the risk.

In my provisional decision I said Mr H hadn't answered AXA's questions incorrectly when he took out his policy. He told it his car didn't have any modifications, which is supported by the evidence. This means he didn't misrepresent information to AXA and it wasn't reasonable for it to rely on the CIDRA rules to avoid Mr H's policy. I said it might be reasonable for AXA to vary its terms or cancel the policy if there was a fundamental change in risk.

AXA thinks there was a fundamental change because of the addition of the wrap. But I don't agree. In my provisional decision I referred to a larger engine, or a different car as examples of what a fundamental change that significantly changes the risk could be. I acknowledge what AXA says about the potential cost involved in repairs involving a vinyl wrap. But I'm not persuaded it's shown this is a fundamental change that required it to take the action it did. I also note this isn't a cost featured in its engineer's assessment of the damage to Mr H's car.

I accept AXA's comments that a vinyl wrap isn't included in its list of acceptable modifications. In my provisional decision I said that it was made clear to Mr H in his policy documentation that he should report any changes to his vehicle made within the policy term. He didn't do this. But as discussed, for AXA to fairly decline the claim and cancel the policy, the change must be fundamental to the risk. I don't think it was, for the reasons I set out here and in my provisional decision. So, I'm not persuaded to change my decision.

### **My final decision**

For the reasons I've explained above, and in my provisional decision I uphold Mr H's complaint. AXA Insurance UK Plc should:

- reconsider the claim without reliance on the modification clause, if this results in a settlement payment it should pay 8% simple interest from the date of the claim until this payment is made \*If AXA considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate;
- provide Mr H with a letter confirming the avoidance was completed in error; and
- pay Mr H £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 June 2023.

Mike Waldron  
**Ombudsman**