

The complaint

Mr A complains AXA Insurance UK Plc unfairly avoided his car insurance policy and declined his claim.

What happened

Mr A's car was damaged by a third party, so he claimed on his policy with AXA. When his car was inspected it was discovered it had a clear paint protection film (PPF) applied to the bodywork.

AXA reviewed the claim and decided to decline it, avoid Mr A's policy and refund his premium. It said this was because Mr A's car was modified and if it had known about the PPF wrap then it wouldn't have covered his car. Mr A didn't think this was fair and complained, he didn't agree the PPF was a modification as it hadn't changed how the car looked and was there to protect the paint.

AXA reviewed the complaint and didn't uphold it. It maintained its position that Mr A had failed to take reasonable care when taking out the policy. It said the PPF was what is known as a "wrap" and Mr A should have declared it when taking the policy out. AXA said if he had then it wouldn't have offered him a policy. Mr A didn't think that was fair and brought his complaint here. He said he wasn't aware the PPF was on the car until he had the claim and provided evidence to support this. He also said his insurance had increased due to the avoidance and so he'd likely need to sell the car.

Our investigator reviewed the complaint and recommended it be upheld. She found that when Mr A took out the policy, he wasn't aware his car had the PPF applied to it and so didn't agree he'd failed to take reasonable care when taking out the policy. She recommended AXA:

1. Reimburse Mr A for any repairs he had to pay to repair his car
2. Pay Mr A the increase in premiums he'd paid due to the avoidance
3. If Mr A had sold the car without having it repaired, she recommended AXA pay the difference between what Mr A sold the car for and what he would have received if it hadn't been damaged
4. Remove the avoidance from internal and external databases
5. Pay Mr A £350 for the distress and inconvenience cause

AXA didn't agree with our investigator. It said it thought Mr A knew about the PPF on the car from the claims calls he'd had and that he therefore should have declared it as a modification.

As AXA 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.

AXA thinks Mr A failed to take reasonable care not to make a misrepresentation when he took out the policy online. Mr A originally used an aggregator site and then was put through to AXA.

I've looked at the question Mr A was asked which says: *"Has the car been modified in any way?"* There is an explanation next to the question which says: *"A modification is any change to the manufacturer's original specification or features. That includes things like new stereos, body kits or spoilers, alloy wheels, new paintwork and any performance enhancement."* Mr A answered the modification question by saying "No".

Mr A's explained he answered the question this way as he didn't know about the PPF on his car, as it's clear. I've also seen the invoice for the PPF which is dated before Mr A bought the car and the advert for when Mr A bought the car doesn't mention that it has PPF applied to it. Mr A has also said he wasn't sent the invoice for the PPF until after the accident as he'd been asked for it to contacted the seller of his car to request it.

I understand AXA thinks Mr A knew about the PPF as during the claim calls, he disputes that it even needs to be declared. From reviewing the information about when the PPF was applied and the sales advert, I'm persuaded that Mr A didn't know about the PPF when taking out the policy, as he's said. I'm therefore not persuaded he's failed to take reasonable care not to make a misrepresentation. And so, it follows that AXA has no remedies under CIDRA.

I've therefore looked at the impact on Mr A from AXA unfairly avoiding his policy. AXA refunded his premium and declined his claim. Mr A's explained that due to the avoidance he's had to do temporary repairs and that the insurance premiums have increased.

I asked our investigator to let both parties know that I intended to direct AXA to:

1. Remove any adverse entries related to the cancellation placed on any internal or external databases
2. Pay the claim in line with the terms and conditions of the policy. Mr A has said he's paid £1,585 for temporary repairs. If these aren't lasting and effective repairs, then AXA will need to re-do the repairs to ensure the damage caused in the accident is repaired to acceptable industry standards

3. Pay Mr A the £1,585 he paid for the temporary repairs, as he shouldn't have had to pay for them. 8% simple interest per year needs to be added to this amount to compensate him for not having the money
4. Pay Mr A £350 as compensation for the distress and inconvenience caused

AXA didn't respond to the additional information around the redress proposed. Mr A responded and explained his new premium had cost him around £500 more than previously, due to the cancellation and asked for this to also be refunded.

I've considered Mr A's points along with the policy schedule for his new policy which he's provided to show this. While I can see he's paid a higher premium, it's not clear how much of this is related to the cancellation. Therefore, Mr A would need to ask his new insurer to recalculate his premium to not include the cancellation and ask for the difference to be refunded. AXA will also need to provide Mr A with a letter confirming it avoided the policy in error so he can provide it to his new insurer.

If the new insurer refuses to refund the increase Mr A paid due to having this policy cancelled, Mr A can let AXA know how much more he's paid due to the cancellation. AXA will also need to pay this amount, subject to reasonable evidence being provided. Also as AXA is now paying this claim, it is entitled to the premium for the policy. However, as Mr A had to buy another policy, he's also paid to insure his car for a period of time the policy with AXA should have covered his car for. Therefore, if AXA seeks payment of the original premium it will need to deduct the amount Mr A paid the new insurer to insure his car, while his car should have been insured under the policy with AXA.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint. I require AXA Insurance UK Plc to:

1. Remove any adverse entries related to the avoidance placed on any internal or external databases and provide Mr A with a letter confirming it avoided the policy in error.
2. Pay the claim in line with the terms and conditions of the policy. Mr A has said he's paid £1,585 for temporary repairs. If these aren't lasting and effective repairs, then AXA will need to re-do the repairs to ensure the damage caused in the accident is repaired to acceptable industry standards.
3. Pay Mr A the £1,585 he paid for the temporary repairs, as he shouldn't have had to pay for them. 8% simple interest per year needs to be added to this amount, calculated from the date Mr A paid for the repairs until the date of settlement.
4. As AXA is paying the claim it's entitled to the premium. If AXA seeks payment for this, it will need to deduct what Mr A paid for his new policy, for the time it would overlap with his policy with AXA.
5. Pay Mr A £350 as compensation for the distress and inconvenience caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or

reject my decision before 8 December 2023.

Alex Newman
Ombudsman