

The complaint

Mr A complains that First Central Underwriting Limited cancelled his motor insurance policy when it found that his car was imported.

What happened

Mr A took out a policy with First Central through an online comparison site and he confirmed that his car wasn't imported. First Central validated his policy and found that the car was an import. It said it didn't offer cover for imported cars. So it cancelled the policy with seven days' notice. Mr A was unhappy as the car had been insured with other insurers for several years without concern.

Our Investigator didn't recommend that the complaint should be upheld. She thought First Central had asked Mr A a clear question about whether the car was imported when he took out the policy, and he'd said it wasn't. She thought First Central wouldn't have offered cover if he had answered the question correctly. And so she thought it was entitled to cancel the policy after giving seven days' notice.

Mr A replied that the car had been in UK for a long time and had been covered by other insurers with no issues. He thought First Central's question was ambiguous. And he asked for an Ombudsman's review, so his complaint has come to me for a final decision.

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 A feels frustrated that other insurers covered his car with no issues, but First Central has cancelled his policy as it was an import. But I think it's for First Central to decide what risks it's willing to cover. I've looked at the car's V5 registration document and I can see that the car was first registered in UK some time after manufacture, so I think there's no dispute that it was imported.

First Central said it cancelled the policy in accordance with the policy's terms and conditions and charged Mr A for the cancellation and for his time on risk. But I think First Central could have applied the relevant law in this case, which 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.

First Central thinks Mr A incorrectly stated that his car was not imported. So I've looked to see if Mr A took reasonable care not to make a misrepresentation when he stated in his application via a comparison site that the car wasn't imported.

And I've looked at the question he was asked when he completed the application and I agree he failed to take reasonable care. This is because he was asked to confirm First Central's assumption that the car wasn't imported. He could answer either yes or no. There was no qualification about how recently the car had been imported. And I think this was a clear question asked by First Central through the comparison site Mr A used.

Mr A chose "No". But Mr A clearly knew the car was imported and he should have answered "Yes". This would then have taken him to the next question about where the car had been manufactured.

The Statement of Fact also states that the car isn't imported. Mr A was provided with this after he took out his policy. So he had an opportunity to check and correct this, but he didn't. And I think this means Mr A failed to take reasonable care not to make a misrepresentation when he said the car wasn't imported.

Mr A has pointed out that many cars in UK are manufactured overseas. But we, and insurers, consider where the car was first registered. Mr A's car wasn't registered in UK until almost year after manufacture. So I'm satisfied it was clearly imported.

First Central has provided evidence from its underwriting guide which shows that if Mr A had not made this misrepresentation it would not have offered cover at all. This is business-sensitive and confidential information and so I can't share this with Mr A. But I can assure him that it's correct and that First Central doesn't cover imported cars. This means I am satisfied Mr A's misrepresentation was a qualifying one under CIDRA.

I also think Mr A's misrepresentation was a reckless or deliberate misrepresentation. This is because I think Mr A must have realised that his car was imported, but he answered the question incorrectly. Mr A said he thought the question was about whether the car was a recent import. But I can't see that this is the question he was asked.

Therefore, I'm satisfied First Central was entitled to avoid (to cancel it from the start) Mr A's policy and retain his premiums in accordance with CIDRA.

But First Central didn't do this. It chose to cancel the policy due to a breach of its terms and conditions. On page 71 of the policy booklet under section 11.1 Your Duty it states

"If the insurer discovers that you or someone acting for you had knowingly provided false information, the insurer will make the policy void and treat it as though it had never existed and not refund any premium or pay your claim. If you were not aware that the information you had provided was false, depending on the nature of the information, your insurer may cancel your policy, or you may be asked to pay an extra premium. You may also be charged a cancellation or amendment fee under the Intermediary Contract."

I think it was fair and reasonable for First Central to invoke this policy term and cancel the policy with seven days' notice, as stated in the cancellation section of the policy. This meant that Mr A had to pay for his time on cover, non-refundable charges for options, and a cancellation fee. Having a cancellation on his record is better for Mr A than an avoidance. So I can't say that First Central acted unfairly or unreasonably in cancelling Mr A's policy.

My final decision

For the reasons given 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 A to accept or reject my decision before 23 May 2024.

Phillip Berechree
Ombudsman