

The complaint

Mr F complains that First Central Underwriting Limited cancelled his motor insurance policy after it found that his car had been modified when it investigated a claim. He wants it to remove the cancellation marker.

What happened

Mr F was involved in an accident and made a claim on his policy. First Central then found what it believed to be a modification to the car that hadn't been disclosed when Mr F took out his policy. Mr F said he didn't know the car had been modified. But First Central provided evidence that Mr F had installed a rear spoiler after he'd bought the car.

Mr F provided evidence that he'd added the spoiler after the policy was taken out. But First Central said Mr F should have told it about the modification, and it didn't cover this. So it cancelled his policy, but it dealt with the claim. Mr F was unhappy with this as his premium had significantly increased due to the cancellation on his record.

Our Investigator recommended that the complaint should be upheld. He thought First Central hadn't shown that Mr F needed to declare the modification to meet the policy's terms and conditions. He thought that there was no ongoing requirement for Mr F to tell First Central about the change. And so he thought it was unfair and unreasonable for First Central to cancel the policy.

He thought it should remove records of the cancellation and provide Mr F with a letter stating that the cancellation had been made in error. And he thought First Central should pay Mr F £200 compensation for the trouble and upset caused.

First Central replied with an engineer's view stating that the modification did meet the policy requirement for disclosure. It said it didn't cover modifications and they significantly increased risk. It provided examples of similar cases brought to our service which hadn't been upheld. It said Mr F had made a deliberate qualifying misrepresentation and it asked for an Ombudsman's review.

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.

Mr F now agrees that he added the spoiler after he bought the car and he's provided evidence to show that he did this after he took out his policy with First Central. So I've thought about whether he should have told First Central about the modification.

First Central has said that Mr F made a qualifying misrepresentation under The Consumer Insurance (Representations and Disclosures) Act 2012 (CIDRA). This states that a consumer needs to take reasonable care not to make a misrepresentation when entering into or varying the contract with an insurer.

But importantly there's no ongoing duty for the consumer to advise an insurer of any changes in their circumstances once the contract begins. However insurers will generally add a policy condition requiring them to do so.

And I can see that the terms of Mr F's policy set out on page 16 the following:

"Changes which may affect your cover

As some changes will affect your cover, you should tell the insurer immediately about any change to the details you have previously declared on your Statement of Fact, for example:

- a modification to your car which improves its performance or handling, including over the air updates from your vehicle manufacturer. Any modification which improves the value or increases the chances of it being stolen or someone breaking into it to steal what is inside".*

I think this is a significant requirement placed on Mr F and I would expect it to be set out in the policy wording and in the summary or Key Facts document. And I can see that First Central has stated on page 2 of the Statement of Facts that:

"You should tell us immediately of any alteration to the details you have declared on this Statement of Fact."

Mr F's Statement of Fact says that the car has no modifications. So I think First Central sufficiently brought the requirement to Mr F's attention for it to rely on the policy term. And I think Mr F should have reasonably told it of any modifications that met the definition provided. But after he made his claim, First Central found that the car had a rear spoiler which it said was non-standard.

When an insurer enters into an insurance contract it effectively agrees to cover the policyholder against certain insured perils. And in many cases, if the consumer's circumstances change during the term of the policy, that is generally just part of the risk the insurer agreed to take on – so long as it doesn't change the actual risk.

We generally think it's only fair that an insurer can require a consumer to tell it about something that fundamentally changes the actual risk it's insuring, something that changes the likelihood of loss or damage occurring. And First Central has set out examples of what it would expect consumers to tell it about.

First Central's engineer said spoilers could make a car handle differently or make it more desirable. But I think this is a generalisation. And so I'm not satisfied that First Central have evidenced that the spoiler Mr F added would improve the performance, value, or chances of the car being stolen, as required by the terms of the policy.

So I'm not satisfied that First Central has shown that the modification Mr F had carried out to the car changed the actual risk First Central was being asked to cover. I think the small rear spoiler was a cosmetic addition and, as I've said above, I can't see evidence that it changed the car's performance or its desirability or value.

First Central has shown it doesn't cover vehicles that have certain modifications. But this doesn't mean it has shown the risk has actually changed, just that it perceives a car that is modified is a risk it doesn't want to insure.

So I don't think there was an actual increased risk of Mr F suffering loss or damage immediately after he added the modification. And it follows that I don't think Mr F needed to disclose this modification until it came to renewing the insurance policy.

And so I'm not satisfied that First Central has shown that Mr F didn't comply with the policy's requirement to tell it about certain changes mid-term. And I don't think it's shown that Mr F made a misrepresentation under CIDRA when he didn't disclose the addition of the rear spoiler mid-term. And, as CIDRA, doesn't apply, then I think it was unfair and unreasonable for First Central to cancel Mr F's policy.

Mr F clearly didn't provide accurate information about the modification when first asked about it. But, taking into account the terms and the policy and the relevant law, First Central would have had to settle the claim if Mr F had been clear and honest at the outset. So I can't reasonably say that Mr F's dishonesty would have had any impact on First Central's liability.

First Central provided examples of decisions for complaints that have come to us previously that haven't been upheld. It said the circumstances are similar. But I disagree as these complaints are about failures to disclose modifications at the start of a policy, not at mid-term. In any case, we consider each complaint on its merits.

So I think First Central should remove any records of the cancellation and provide Mr F with a letter stating that the cancellation was made in error. He can then ask his new insurer to re-rate his premium.

Mr F's claim was dealt with, but this matter has caused Mr F trouble and upset for some time. He's had to take out new cover for a significantly higher premium. Our Investigator recommended that First Central should pay him £200 compensation for this. I think that's fair and reasonable as it's in keeping with our published guidance for the level of impact.

Putting things right

I require First Central Underwriting Limited to do the following:

1. Remove records of the cancellation from any external and internal databases where it's been recorded.
2. Provide Mr F with a letter stating that the cancellation had been made in error.
3. Pay Mr F £200 compensation for the distress and inconvenience caused by its unfair cancellation of his policy.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require First Central Underwriting Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 4 October 2024.

Phillip Berechree
Ombudsman