

## **The complaint**

Miss A complains that when her car was stolen and she made a claim under her motor insurance policy with First Central Underwriting Limited they voided her policy from inception and declined her claim, as they said her car had undeclared modifications. She says this is unfair as she wasn't aware of the car having any modifications.

## **What happened**

This claim has been dealt with on Miss A's behalf by her partner who is a named driver on her policy.

Miss A's policy with First Central commenced on 7 October 2023. When the policy was taken out no modifications to her car were declared.

On 15 November 2023 Miss A's car was stolen. She reported this to the police and notified First Central of a claim under her policy. On 30 November 2023 Miss A was notified by the police that her car had been found. Forensic tests showed that it had been used in a number of criminal activities and it was damaged.

First Central arranged for an engineer to inspect Miss A's recovered car and he reported that the car had been fitted with an aftermarket air filter which allowed the engine to take in more air, improving performance. The engineer stated that making an engine more powerful without also considering brakes, tyres, suspension, safety equipment etc could make the car dangerous and increase the risk of an accident.

Miss A's partner had a number of calls with First Central regarding her claim. He confirmed that Miss A set up and purchased the policy and that they went through the questions they were asked together and understood what they were being asked. He also confirmed that they checked the details of the policy when the documentation was received.

First Central advised him that Miss A's policy had been voided from inception as it was fitted with an aftermarket air induction kit. In response to this he stated that "He was obsessed with cars and that would increase the horsepower of the car and its performance." He denied that the car had an air induction kit and said that if it did "It was a fake, as the car drove like a turtle."

He told First Central that the car had been bought from a friend, at a good price, and had recently been serviced and had an MOT. So he said there was no need for him to check under the bonnet, as had he done this First Central said he couldn't have missed the air induction kit which was bright blue in colour.

He also said that he was very familiar with air induction kits as "His friends do them all the time. But they wouldn't do one on a 1.4 Litre car."

During the second call First Central have provided Miss A's partner says they had no knowledge of the air induction kit. He also said that the car "drove normally" and First Central needed to prove they were aware of, or had purchased the kit, as he and Miss A "weren't

mechanics.” He also said that First Central had ignored a vital point, that the car had been stolen and was out of their possession for two weeks before it was recovered. And as the police had confirmed that the car had been used in criminal activities he suggested that the air induction kit had been added by the thieves to improve its performance.

First Central told Miss A’s partner that they were aware that the car had been stolen and considered it unlikely that thieves would make any modifications to a car they were simply going to use and dispose of. He was told that the only way to appeal the decision to void Miss A’s policy was to raise a complaint. And they’d be writing to Miss A to confirm their decision. A complaint was then raised about the policy being voided and the claim declined.

First Central wrote to Miss A on 20 December 2023 advising her that when she took out her policy she stated that her car hadn’t been modified, but an inspection had shown that the car was fitted with an aftermarket air induction kit. They viewed this as misrepresentation, as had she provided the correct information they wouldn’t have offered her cover. So they were voiding her policy from inception, they’d be returning her premium payment to her and she’d had no cover in place in respect of her claim.

First Central responded to complaint raised by Miss A’s partner on 10 January 2024. Their final response letter refers to the conversations between them and Miss A’s partner regarding the car and modifications to it. Based on those conversations First Central said they were satisfied that Miss A was aware her car had been modified so they didn’t uphold her complaint.

Unhappy with First Central’s response Miss A complained to our service. Our investigator considered the case but didn’t feel that First Central needed to take any action. Based on the calls Miss A’s partner had with First Central our investigator was satisfied that he was aware that the car had been fitted with an aftermarket air induction kit. During the conversations he refers to the induction kit not improving the car’s performance and suggests that the kit was either fake or may have been fitted by the thieves.

Our investigator thought that suggesting the kit was fake, meant that Miss A’s partner knew it was present. And she didn’t think it likely that the thieves would have spent any money on a car they intended to use and dispose of.

She considered what the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) says about misrepresentation. The Act requires insurers to ask clear questions and consumers to answer those questions based on all the material information they know, or ought to know. If a question was answered incorrectly, the insurer must then show it was a qualifying ‘misrepresentation.’ This means that if the consumer had provided the correct information then the insurer must show it wouldn’t have entered into the contract at all, or would have done so on different terms.

When taking out the policy Miss A was asked whether the car had any modifications and she answered ‘no.’ First Central have provided details of the options she’d have seen relating to modifications. Miss A’s partner advertised the car for sale in March 2024 and listed details of modifications to it. While he maintained that they weren’t aware of the air induction kit, our investigator said the advert showed they were aware of other modifications which she said showed reasonable care hadn’t been taken in answering the question asked. So she was satisfied a misrepresentation had been made.

As there’d been a misrepresentation our investigator was satisfied First Central’s decision to void the policy was reasonable. They’d treated the misrepresentation as careless rather than reckless or deliberate and returned Miss A’s premium, as CIDRA requires them to do, so our investigator didn’t require them to do anything further.

Miss A didn't accept our investigator's opinion. Her partner responded saying that had they been aware of any modifications these would have been declared. She wouldn't have made a claim if there was a risk her insurance was invalid. He didn't have the knowledge or expertise to identify modifications and as the car was bought from a friend, had been recently serviced and had a MOT he didn't feel the need to carry out a thorough inspection beyond ensuring it was in good working order.

On behalf of Miss A her partner has also provided details of the impact of First Central's decision to void her policy.

The case has now come to me for a 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.

In looking at this case I need to first decide whether I think there was a misrepresentation when Miss A purchased her policy from First Central. Although the policy was in Miss A's name her partner refers to the car as being his. The car was purchased from one of his friends and from what he told First Central, he had a good knowledge of cars. During one of his calls with First Central he told them "he was obsessed with cars" and that "he was very familiar with air induction kits, as his friends do them all the time."

He qualified this statement by saying his friends wouldn't put an air induction kit in 1.4 litre car. He also told First Central that he had no idea the car was fitted with an aftermarket air induction kit, as this would have improved performance and "the car drove like a turtle."

And he said that he had no reason to check under the car's bonnet as it had recently been serviced and had an MOT, and he bought it from a trusted friend, who was doing him a favour over the price, as he was getting married.

In their final response letter First Central clarified what was considered as a modification for the purposes of Miss A's policy and their decision to void her policy. They say a modification was "any change made to the car that wasn't part of it when it was first wheeled out of the factory." And that in addition to the air induction kit the car had other clearly visible modifications – tinted rear lights, wind deflectors, a coloured roof and an aftermarket radio/sat-nav, none of which were declared. But they also said that the air induction kit is their only concern in this case.

First Central didn't accept that Miss A's partner hadn't checked the car before, or after it was purchased, due to his expressed "obsession" with cars. Having listened to the calls First Central have provided I find it difficult to accept that he wouldn't have checked the engine either before or after purchasing the car. And having opened the bonnet, given his professed familiarity with air induction kits, I don't accept that he could have failed to notice the air induction kit and recognised it for what it was.

Miss A's partner confirmed during his calls with First Central that although she purchased the policy, they went through the questions on the online application together and both understood them. And that they checked and understood the policy documents when they were received.

Miss A's partner has also suggested the air induction kit might have been fake or fitted by the people who stole the car. First Central's engineer confirmed the presence of an air induction kit when he inspected the car, so I'm satisfied it's not a fake. And I'm not

persuaded that thieves who had stolen the car to use and dispose of, would have made any modifications to the car to improve its performance. If it didn't drive as fast as they wanted it to, I think they'd just have acquired another car that did.

I'm only considering the air induction kit, as this is the modification First Central based their decision to void Miss A's policy on, despite their reference to other modifications. Based on her partner's professed knowledge of cars and his statement that he was "very familiar with air induction kits, as his friends do they all the time" I'm persuaded that when taking out her policy Miss A knew, or ought to have known, that her car had been modified. And that this was information that was relevant to First Central.

I'm satisfied Miss A didn't take the reasonable care required to ensure she answered the clear question she was asked about her car having any modifications correctly. So there was a qualifying misrepresentation under CIDRA.

First Central have provided evidence to show that if they'd been aware the car was modified they'd wouldn't have provided Miss A with cover. They've treated the misrepresentation as careless, rather than deliberate or reckless, which I think is correct, and they've returned Miss A's premium as CIDRA requires them to do.

While I understand that Miss A is unhappy with the decision to void her policy from inception, and I appreciate the impact this has had on her and her partner, I think the decision was reasonable and made in line with CIDRA so I won't be asking First Central to do anything.

### **My final decision**

For the reasons set out above my final decision is that I don't uphold Miss A's complaint about First Central Underwriting Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 27 November 2024.

Patricia O'Leary  
**Ombudsman**