

The complaint

X complains that First Central Underwriting Limited ("First Central") cancelled his motor insurance policy unfairly.

What happened

X took out a motor insurance policy with First Central, which First Central subsequently cancelled because it said he had misrepresented his driving license type when he took out the policy.

First Central considered this to be a careless qualifying misrepresentation, which entitled it to charge a higher premium. When X refused to pay the higher premium, First Central cancelled the policy, saying it could no longer insure him. It refunded his premiums, minus administration fees, and it deducted an amount for the time he had cover.

Unhappy with First Central's actions, X made a complaint. First Central said in its response that it had followed the correct process and that this was supported by the policy wording which required a customer to give complete and accurate information. It offered to waive the cancellation fee of £50 as a gesture of goodwill.

X didn't accept First Central's response, so he referred his complaint to this service. Our Investigator initially thought it should be upheld but after First Central asked the Investigator to reconsider and provided additional information, the Investigator changed her mind and didn't think it should be upheld. She said First Central was entitled to do what it did even though she thought there hadn't been a qualifying misrepresentation.

Because X didn't agree with our Investigator, he asked for an Ombudsman's decision. So the complaint has now 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.

Having done so, I've decided not to uphold this complaint. I'll explain why.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) – not the Insurance Act 2015 which X has referenced and which relates to commercial customers only. CIDRA 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.

First Central thinks X failed to take reasonable care not to make a misrepresentation when he accepted a quote that was generated by a price comparison website. X proceeded with the quote despite this quote being based on a provisional driving license, even though he held a full driving license at the point he accepted the quote.

I've looked at how the information was presented to X at the time and which questions were asked, or – if the quote was generated automatically by a price comparison website – whether X was directed to check and confirm that his details were correct before taking out the policy.

First Central has said that the following messages were displayed on the price comparison website, before X proceeded with the policy:

“The level of cover and future claims could be affected if you don't answer questions honestly and to the best of your knowledge”

and

“To make things easier, we've already filled in some information. Just review the details before continuing, and change anything that's not right.”

The above satisfies me that X was asked to check and confirm the details that had automatically generated from historical data, before taking out the policy. So I don't think X took reasonable care not to make a misrepresentation when he didn't check the automatically generated information's accuracy before proceeding. Furthermore, in its welcome email to X, First Central directed him to the statement of fact, which I can see clearly sets out the license type as “Provisional (UK)” despite the fact that X had passed his full driving test over a year earlier. And the email gave X clear instructions on how to access the document and check his details were correct on it.

I've considered whether this was a qualifying misrepresentation, i.e. whether it made a difference. First Central has provided evidence, which includes its underwriting criteria. This shows that a higher premium is charged for changing the license type from a provisional to a full UK driving license, or for adding a fault claim in the last three years. So I'm satisfied First Central would've acted differently had X provided it with the correct information after checking his details.

This means I'm satisfied X's misrepresentation was a qualifying one. First Central has treated X's misrepresentation as a careless misrepresentation, and I think this is fair because I've seen no evidence that X was deliberately dishonest or reckless.

As I'm satisfied X's misrepresentation should be treated as a careless one, I've looked at the actions First Central can take in accordance with CIDRA. Under CIDRA, First Central would be entitled to charge a higher premium for the policy to reflect its recalculated risk – and if X refused to pay that premium, it would be entitled to allow X to cancel his policy which would mean X wouldn't have to declare in future that an insurer had cancelled a previous policy. CIDRA stipulates that in these circumstances the insurer must refund all unused premiums without charging a cancellation fee. Instead of cancelling the policy himself, X's policy was cancelled by First Central and this was ultimately recorded as an insurer cancellation. I don't consider First Central acted unfairly by doing what it did, as this was the remedy available to it under CIDRA.

I appreciate X will be disappointed with my decision. And although I don't think X made a deliberate or reckless misrepresentation, I do think it was a careless one as he had opportunities to check his details were correct and didn't do so. He's said that the statement of fact was hidden behind a password protected account that he had to set up, so it wasn't easily accessible. But I don't agree. I think the instructions to access the document were clear and that even prior to taking out the policy, I think it's likely X was asked to check his details were correct on the price comparison website itself.

Ultimately, I have to consider what CIDRA allows an insurer to do in these circumstances and I'm satisfied First Central acted in line with CIDRA in doing what it did. It follows therefore, that I won't require First Central to take any further action.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 22 October 2024.

Ifrah Malik
Ombudsman