

## **The complaint**

Mr M complained that First Central Underwriting Limited declined his claim under his motor insurance policy and declared it void from the start.

## **What happened**

Mr M's car was damaged in an accident, and he claimed under his policy. First Central's engineer inspected the damage and noticed that Mr M's car had been modified by a rear tailgate spoiler, and a modified rear exhaust with matching rear diffuser ("the modifications").

First Central said that Mr M hadn't told them about these modifications when he took out the policy and, if he had, they wouldn't have insured him at all. First Central said he had made a misrepresentation, and so they declined his claim for the total loss of his car, and the third-party damage. First Central had already made him a total loss payment for the car and so they asked him to repay that, which Mr M did. They also treated his policy as if it was void from the start but did refund the premiums he had paid.

Mr M said he didn't know that they were modifications, wasn't a car expert and so couldn't be expected to have known. He felt that First Central had decided too quickly and without much discussion with him even though he had volunteered information. He was unhappy that First Central suggested he had been dishonest, and that the avoidance meant that his premiums had increased. He wanted First Central to clear his insurance record, pay the claims and compensate him for the stress he'd experienced.

The investigator recommended that Mr M's complaint should be upheld. She agreed that Mr M had made a misrepresentation, but it wasn't a qualifying one under CIDRA. She thought First Central had treated Mr M unfairly and so they should deal with his claim under the policy and pay the third-party claim costs. First Central didn't agree and so I've been asked 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.

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 think Mr M failed to take reasonable care not to make a misrepresentation when he took out the policy via an online portal in that he didn't disclose that his car had modifications. First Central haven't said what type of CIDRA misrepresentation they considered Mr M to have made. However they did refund his premiums which reflects the CIDRA remedy for a careless misrepresentation. I've looked into whether Mr M took reasonable care not to make a misrepresentation, whether the misrepresentation was qualifying, and whether First Central's actions were in line with CIDRA.

Mr M's policy does make it clear that it's a condition of the policy that all the information provided is shown in the Statement of Fact and must be true and complete, and that if Mr M failed to keep to any conditions, First Central may reject a claim. First Central have the right to cancel the policy immediately, for misrepresentations which would have caused them not to insure if they'd known. We think that it's a commercial decision for an insurer to decide if they want to cover modifications or not, and when a consumer takes out that insurance they have agreed to its terms, so it doesn't matter if they don't agree with their reasons. And First Central have provided evidence that they wouldn't have insured Mr M at all if they had known about the modifications.

I needn't go into the questions First Central asked Mr M there about modifications, because Mr M agreed that he hadn't disclose the modifications. He said this was because he didn't know that they were modifications. He said as follows. He'd bought his car like that and didn't know it had been modified. As far as he was aware they were factory fitted options available for that model of car. He had bought his car from a car dealership and had asked them if it was standard, and they said yes. He had no reason to disbelieve them. He was not a car expert, and it was unfair for First Central to expect him to know that they were modifications.

So he Mr M said he hadn't made a misrepresentation and if he'd known they were modifications he would have declared them.

First Central said that his car's modifications were visible, and either that it was likely that Mr M would have known that they were modifications or that they were so obvious that a reasonable consumer should have realised that.

But I don't think that's reasonable. Mr M did checks on the car before he bought it. He did an outstanding finance check, asked the selling garage about its service history, and checked its logbook. He said that the garage told him the car was standard, and their advert didn't mention modifications. So he did act as a reasonable consumer would. I don't agree that his car simply having those parts should have alerted Mr M to the possibility of modifications.

After the investigator had given her view, First Central produced a new engineer's report with new information. It said that the modifications were not manufacturer ones, and that Mr M should have realised that the car had been modified because the car's old MOTs from several years ago showed that undertrays and engine covers had been fitted to it and the car had worn brake pads and tyres. First Central said that the modifications would improve his car's performance, encourage faster driving behaviours and increase its desirability and so affect the car's theft risk over that of the standard model.

But Mr M has produced a photo of his car's rear tailgate spoiler with the car's manufacturer's stamp on it, which shows that it was a genuine manufacturer part. And the investigator found evidence that the manufacturer had offered that as an optional extra for years. Mr M said that he had liked that model of car and over time had seen a variety of different exhaust options and tailgate spoilers on that model. So his car having them didn't suggest to him that

the parts were non-standard. He wasn't an expert on that car.

First Central also said that Mr M knew that his car wasn't a standard model because he had said that it was the only one of its kind. But I've listened to the recording of the call when Mr M said that, and I think he simply meant that he had hoped to buy that make and model of car and the one he bought was the only one of its kind on sale at the time he was looking. He didn't mean that he knew it was modified.

First Central's engineer spotted the modifications, but I don't think that a reasonable consumer could be expected to have done so. This is because the investigator's research has shown that the modifications were manufacturer options for that car which had been available for years and could be seen on models the road.

The standard CIDRA requires is one of a reasonable consumer. I don't think that a reasonable consumer would be expected to know from past MOTs from about 2014 that a car having under-trays and engine covers and worn brake pads and tyres meant that the car must have been modified, particularly when those matters were not noted in more recent years' MOTs. Nor must it mean that modifications were still there when Mr M bought the car.

Overall, on the balance of probabilities I think Mr M did take reasonable care not to make a misrepresentation about the modifications. Effectively this means that he has not made a qualifying misrepresentation and so First Central were not entitled to avoid the policy under CIDRA. So they haven't acted fairly and reasonably.

This means that First Central cannot avoid his policy and decline Mr M's claim. First Central must still deal with his total loss claim and also pay the third-party costs and not seek to recover those from Mr M. They should also amend insurance databases to remove mention of the policy avoidance from Mr M's insurance record.

Mr M was unhappy with the market value that First Central had paid him for his car. I cannot deal with that issue here, but as the investigator has explained to Mr M, if he remains unhappy, he may wish to take that up with First Central by making a complaint to them about that. However, I would expect First Central to deal with the total loss payment issue fairly. Because they previously accepted the total loss claim, pending any negotiations about that or the outcome of any complaint, I would expect First Central to at least make an interim payment plus interest on that from the date Mr M repaid their original total offer amount. If First Central returned the premiums Mr M paid for the policy First Central would be entitled to ask Mr M to pay this back.

Mr M had fuel and travel costs to buy a new car but we do not normally expect an insurer to cover those costs. However First Central's avoidance of his policy caused him distress and inconvenience. He had financial stress and had to borrow money from his family to buy a new car. He has explained to us that he experienced difficult family circumstances over this period due to family illnesses and I can see First Central's actions adversely affected his mental health and made that situation worse than it had to be. I can also see that their allegations of dishonesty hurt him. I think that £500 reflects the distress and inconvenience he experienced then.

Mr M's car and motorbike insurance premiums have increased because of First Central's policy avoidance. Going forward, with the letter First Central must give him, Mr M can ask his current insurers to recalculate his premiums as if he didn't have a policy avoidance on his record.

The investigator recommended that First Central should find out and calculate the difference between what his new insurers charged for his car insurance since the avoidance, and what

First Central would have charged Mr M for that insurance if he had remained insured with them for his new car, without accounting for their avoidance because of the modifications. And that First Central should pay Mr M any such difference.

I agree with that principle, but I think that given Mr M was otherwise not happy with First Central, it is not likely that Mr M would have remained insured with them even if First Central hadn't avoided the policy. I think that a better approach is for First Central to find out and calculate the difference between what his subsequent or current insurers charged Mr M taking into account the avoidance on his record, and what they would have charged Mr M without that avoidance and pay Mr M that difference plus interest from the date of the subsequent insurers' policy start dates. Because Mr M's motorbike insurance with another insurer also increased due to First Central's policy avoidance, I think that, on Mr M showing proof of that increase, First Central should pay the increase plus interest.

### **My final decision**

For the reasons given above, it's my final decision that I uphold the complaint and I require First Central Underwriting Limited to do the following:

- Reinststate Mr M's policy and deal with Mr M's total loss claim without taking the modifications into account, including paying the third-party costs and not seeking to recover those from Mr M.
- Remove the policy avoidance record from internal and external insurance databases
- Give Mr M a letter explaining that First Central avoided his policy in error, which he can show current and future insurers.
- Pay Mr M £500 in compensation for the distress and inconvenience their actions caused him.
- Find out and calculate the difference between what Mr M's subsequent insurers charged him for his car insurance and what they would have charged him if First Central hadn't avoided the policy, and pay him any difference between those amounts, plus interest at 8% simple per annum on that difference, from those insurer policy start dates until the date First Central pay him it.
- Pay Mr M the increase in his motorbike insurance with his other insurer due to First Central's policy avoidance, plus interest of 8% simple per annum from the date of that increase until the date First Central pay him it.

First Central must pay the compensation within 28 days of the date on which we tell them Mr M accepts my final decision. If they pay later than this, they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If First Central consider that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr M how much they've taken off. They should also give Mr M a tax deduction certificate if Mr M asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 August 2024.



Rosslyn Scott

**Ombudsman**