

The complaint

Mr M has complained that Highway Insurance Company Limited avoided (treated it as if it never existed) his motor insurance policy, refused to pay his claim, retained his premiums and is seeking to recover its costs from him.

What happened

Mr M took out a motor insurance policy with Highway through an online broker's site. When he was involved in a multiple car collision, he tried to claim on his policy.

Highway declined Mr M's claim, avoided his policy and kept the premiums he'd already paid. When Mr M complained, it said he'd answered the question he'd been asked about modifications to his car incorrectly. Mr M had had alloys fitted to the car two days before the policy started. And it said it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid his policy and refuse his claim.

Mr M brought his complaint to us, and our Investigator thought it should be upheld in part. She agreed there had been a qualifying misrepresentation. But she didn't think this was deliberate or reckless. She believed it was careless. She said Highway should refund Mr M's premium and offset this against its outlay for the costs of the claim.

Highway doesn't agree with the Investigator and has asked for an Ombudsman's decision. It said Mr M had made the modifications days before being asked the question about them. So it thought Mr M was reckless in his answer. Mr M replied that he replaced the wheels for safety reasons.

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 M feels that he is being punished severely for an error. And this will affect his future insurance and his finances and has affected his current mental wellbeing. I was sorry hear about this.

Highway said he had made a qualifying misrepresentation. And so I'm satisfied that the relevant law in this case 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, and retain the premiums. 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. But it must return the premiums.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it.

Highway thinks Mr M failed to take reasonable care not to make a misrepresentation when he stated in his application via a broker's site that the car didn't have any modifications. And I've looked at the question he was asked when he completed the application and agree he failed to take reasonable care. This is because he was asked to confirm the following assumption:

"2. I declare that the vehicle

Has not been modified apart from modifications for disabled drivers and has no more than 7 seats in total and is right-hand drive only and has a valid MOT certificate (if required) and has not been recorded as a category A or B insurance total loss and is not a Q plated vehicle."

I note there was no further information provided about what a modification was, and no examples of unacceptable modifications were provided. But I still think this was a reasonably clear question asked by Highway through the comparison site Mr M used and Mr M could have asked for advice if he was uncertain about the correct response.

Mr M agreed to the assumption and bought the policy. But Mr M had fitted non-standard alloy wheels to the car two days earlier. Mr M has told us that these were more expensive than the manufacturer's alloys, and so I think he should have known that they were a modification.

And I think this means Mr M failed to take reasonable care not to make a misrepresentation when he said the car didn't have any modifications.

Highway has provided evidence which shows that if Mr M had not made this misrepresentation it would not have provided cover at all as the policy doesn't allow any modifications. This means I am satisfied Mr M's misrepresentation was a qualifying one under CIDRA.

But I'm not satisfied that Mr M's misrepresentation was a reckless or deliberate misrepresentation. I've not seen evidence to show that Mr M incorrectly answered the question about modifications deliberately. And I don't think there is sufficient evidence to show that Mr M was reckless in his answer.

This is because I can't see that Mr M was provided with any guidance on what constituted a modification, as I've seen in other policies. Mr M has explained that he hadn't intended to change the car's wheels but had replaced the alloys for safety reasons and took the opportunity to make an upgrade. And he's provided invoices to support this.

I think Mr M reasonably thought the more expensive alloys would increase the car's safety. I don't think Mr M was made aware of the seriousness of this change because I can't see why he would have bought a policy that didn't provide cover. And so I think Mr M's oversight was careless.

Therefore, I'm satisfied Highway was entitled to avoid Mr M's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, Highway does not have to deal with his claim following the damage to his car. And it can recover its costs of the claim from Mr M.

But as I'm satisfied that the misrepresentation was careless, I think Highway should not retain Mr M's premium as this isn't a remedy under CIDRA. And I agree that Highway should

offset the premium Mr M paid against the outlay it has incurred and now seeks to recover from Mr M.

And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Highway to rely on it to avoid Mr M's policy produces the fair and reasonable outcome in this complaint.

Putting things right

I require Highway Insurance Company Limited to offset the premium Mr M paid against what has been paid out on the third-party claims in order to reduce the amount owed.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint in part. I require Highway Insurance Company Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 November 2024.

Phillip Berechree
Ombudsman