

The complaint

Mr M complains that AXA Insurance UK Plc (AXA) refused to pay a claim on his motor insurance because of modifications to his car.

What happened

Mr M had motor insurance underwritten by AXA. Following an accident he made a claim on his insurance.

When Mr M had renewed the policy online after the first year, he declared new modifications, including a vinyl wrap on the bodywork.

AXA voided the policy saying that at this renewal Mr M had changed the “Has the car been modified in any way ?” box from “no” to “yes”. AXA said upon pressing “yes”, a list is displayed of the modifications it accepts. After this list, there is a question “Has the car been modified in any way other than the modifications we accept ?”. AXA said Mr M pressed “no”. AXA said vinyl wraps are not listed in the modifications that it accepts.

AXA voided the policy from its inception, so it was as though it never existed. That meant Mr M wasn’t covered for the accident and AXA didn’t pay the claim.

Mr M wasn’t happy about this decision and the time taken to reach it, and complained to AXA. AXA said all insurers decide on the risks they wish to accept, including modifications. AXA said that vinyl wraps are not listed in the modifications that it accepts.

Regarding the time taken to void the policy, AXA said decisions to void a policy are never taken lightly, and it needed to take time to ensure it made the right decision. AXA said it was in contact with Mr M but was also awaiting the decision by its underwriters.

Mr M wasn’t happy with what AXA said so he complained to this service. Our investigator didn’t uphold his complaint. He said he didn’t think AXA acted unfairly as the policy didn’t allow for the modification of the wrap on Mr M’s car.

Mr M wasn’t happy with what the investigator said so his complaint has been passed to me. Mr M wants AXA to settle the claim and pay him the value of the vehicle minus the premium which AXA refunded and any excess, plus interest. Mr M also wants his legal cover reinstated for the entire period from when the policy was taken out, and compensation for the loss of use of the vehicle and the massive effect he says this has all had on his mental health. Mr M also wants to be compensated for the increase in his insurance premium as a result of having to declare to future insurance companies that he has had a policy voided.

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 don’t uphold Mr M’s complaint. I’ll explain why.

When this service looks into this kind of complaint we consider the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), as we normally find this produces a fair and reasonable outcome.

CIDRA says a consumer needs to take reasonable care not to make a misrepresentation when taking out an insurance policy. It says if a consumer doesn't do this the insurer can take certain actions as long as the misrepresentation is a qualifying one.

So I've considered whether I think Mr M took reasonable care not to make a misrepresentation, whether any misrepresentation was a qualifying one and whether the action AXA took was in line with CIDRA.

To do this, we first look at the information provided by the consumer and decide whether it was a correct statement of fact, an incorrect (or incomplete) statement of fact, or a statement of opinion. It's for the insurer to prove that the information was incorrect or incomplete.

Mr M accepts that the car was wrapped. He doesn't accept that he didn't tell AXA this when he renewed the policy.

AXA has told this service that if Mr M had clicked "yes" to the question "Has the car been modified in any way other than the modifications we accept?" the policy would have been declined at the quote stage and he wouldn't have been able to take out any insurance. AXA has provided this service with its underwriting criteria which confirms this.

AXA has provided a screenshot of the list of acceptable modifications which was on the website alongside the questions about modifications. The list doesn't include a wrap.

AXA has also provided a screen shot of Mr M's policy details which shows "yes" to the first question "Car modified in any way" and "no" to the second question "Any modification not listed".

Mr M says he clicked "yes" to the second question but on balance I don't think he could have as I'm satisfied that if he did AXA wouldn't have offered him cover. I'm also persuaded by the screenshot of the policy details AXA provided which shows "no" next to the second question.

So I think there was a misrepresentation as the information about the modification wasn't correct.

The next thing to consider is whether it was a qualifying misrepresentation.

Under CIDRA there are two main factors to take into account to decide whether there's been a qualifying misrepresentation:

- Did the consumer take reasonable care not to make a misrepresentation ?
- Has the insurer shown that without the misrepresentation they wouldn't have entered into the contract (provided the policy) at all, or would have only done so on different terms ?

The test for whether or not the consumer took reasonable care is set out in CIDRA. The standard of care required is that of a "reasonable consumer". This means we need to consider what a reasonable consumer would have done in the circumstances. The onus is on the insurer to ensure that information is obtained through clear questions put to the consumer. And the onus is on the consumer to take reasonable care not to make a misrepresentation when answering those questions. Consumers are only expected to

answer questions to the best of their knowledge and belief, but if a consumer is unsure of the answer to a question, it's reasonable to expect them to find out.

I think that AXA's questions about modifications were clear and specific. And it is not in dispute that the car was modified by a wrap. So I don't think that Mr M did take reasonable care not to make a misrepresentation when he said his car didn't have any modifications not on AXA's list.

I think that AXA has shown, by providing its underwriting criteria, that without the misrepresentation they wouldn't have entered into the contract (provided the policy).

The remedy available to the insurer is different if a misrepresentation was careless or deliberate/reckless and it's for the insurer to show that a qualifying misrepresentation is deliberate/reckless. If it's not deliberate/reckless a qualifying misrepresentation will be taken to be careless.

CIDRA sets out that if the qualifying misrepresentation was deliberate/reckless, the insurer can avoid the policy and refuse all claims and need not return the premium, unless it would be unfair to the consumer to retain them.

If the qualifying misrepresentation was careless, and the insurer wouldn't have provided the insurance on any terms, it may avoid the policy and refuse all claims, but it must return the premium. This means the policy will be cancelled from the start and it will be as if it never existed. If there's an ongoing claim, the insurer won't have to pay it provided it can fairly avoid the policy the claim is under. This is because the avoidance of the policy will mean that there was no policy in force when the loss or damage occurred.

I think AXA's decision that Mr M made a qualifying misrepresentation was fair and reasonable. And I think AXA acted fairly and reasonably by treating the misrepresentation as careless. AXA avoided Mr M's policy and refunded his premiums. This means the actions AXA took are in line with CIDRA, so I'm not asking AXA to pay Mr M anything.

My final decision

For the reasons given above I don't uphold Mr M's complaint. So I won't be asking AXA Insurance UK Plc to do anything.

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

Sarah Baalham
Ombudsman