

## **The complaint**

Mr M is unhappy First Central Underwriting Limited (First Central) avoided his motor insurance policy and refused to pay his claim.

Mr M is being represented in this complaint and submissions have been made on his behalf. However for ease, I've referred to Mr M throughout this decision.

## **What happened**

Mr M took out a motor insurance policy with First Central. Unfortunately in May 2023 Mr M was involved in an accident and submitted a claim to First Central.

During its investigation into Mr M's claim First Central found that Mr M's car had modifications which hadn't been declared to it. First Central said it wouldn't have offered the insurance policy to Mr M had he disclosed these modifications when he took out the policy. So it avoided Mr M's policy, declined to deal with his claim and refunded Mr M the policy premium.

Mr M was unhappy with this and so referred the complaint to this Service. Our investigator upheld the complaint. She thought that the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) applied and this required Mr M to take reasonable care not to make a misrepresentation when taking out an insurance policy. But she thought Mr M had taken reasonable care when taking out the insurance policy as she didn't think Mr M was or ought reasonably to be aware the car was modified. So she didn't think it was fair or reasonable for First Central to avoid Mr M's policy.

She thought that First Central should re-consider Mr M's claim. She said that if any settlement was due it was reasonable for First Central to deduct the premium it had refunded to Mr M from this settlement. She also thought it should remove any cancellation marker First Central may have applied and pay Mr M £200 compensation.

Mr M accepted the investigator's view, but First Central disagreed saying that it was Mr M's responsibility to make sure the information he disclosed was correct.

As First Central disagreed with the investigator, the complaint's been passed 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.

The relevant law in this case is 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 that 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 failed to tell it his vehicle had modifications.

During the application process Mr M was asked whether his vehicle had any modifications. Mr M had the option to click for an explanation of this question which was:

*'If you or the previous owner has made a change from the manufacturer's original specification such as alloy wheels, air conditioning, bodywork, exhaust system, suspension or tinted windows, add it here.'*

*'If you're unsure if your car's been modified, check its previous history to find out'*

Mr M answered this question by confirming that his car didn't have any modifications. First Central have provided a report from an engineer who has said Mr M's vehicle had a non-standard fitted spoiler, side skirts and a diffuser, which are modifications. Therefore I think it's reasonable to conclude that Mr M's vehicle did have modifications.

However CIDRA would only allow First Central to deem this as a qualifying misrepresentation if Mr M failed to take reasonable care not to make a misrepresentation when completing the policy application. So I've thought about whether I think Mr M failed to take reasonable care.

Taking into consideration all of the relevant circumstances and evidence provided, I don't think Mr M failed to take reasonable care when answering this question and I'll explain why.

Mr M has explained that the modifications were on the vehicle when he purchased it, and he had no knowledge the car had been modified in any way. First Central have shown evidence of the vehicle for sale in February 2022, prior to Mr M purchasing it, and the modifications were already in place, so it's clear the modifications were already on the vehicle when Mr M purchased it.

Based on the photographs provided I don't think it would be immediately obvious to a reasonable consumer that the issues in question weren't fitted to the car when it was first manufactured. The modifications are in keeping with the style of the vehicle and I don't think a reasonable consumer would know that these modifications did not come as standard. Additionally Mr M's vehicle is a sport version and so I don't think it would be unusual for a vehicle of this type to have a spoiler or side skirts which may make it obvious it has been modified.

First Central called two garages who were involved in the sale of Mr M's vehicle. The first said that it didn't remember the vehicle, that it would usually state obvious modifications but that sometimes things get missed. The second garage said it thought the modifications were part of the sport package and so it wouldn't have advertised the vehicle as being modified. Both garages said they had changed their systems and so the original sales advertisement hasn't been provided. However the original sales invoice has been provided and there is no mention of modifications on this.

First Central haven't provided any persuasive evidence that Mr M was aware of the vehicle

modifications when he purchased it. Neither garage gave reliable testimony that any modifications would have been listed on the sales advertisement and there is no mention of modifications on the sales invoice. I'm not persuaded by the evidence First Central have provided that Mr M had any particular knowledge about vehicles or modifications beyond that of a reasonable consumer which meant he should have known the car he purchased had been modified.

Based on the evidence provided I don't think Mr M failed to take reasonable care when answering the question about modifications to his vehicle. As I don't think Mr M failed to take reasonable care, it wasn't a qualifying misrepresentation under CIDRA. As such First Central wasn't entitled to avoid Mr M's policy as it has done. As First Central have unreasonably avoided Mr M's policy it needs to reinstate Mr M's policy and re-consider his claim.

First Central refunded Mr M's policy premium. If any claim settlement is due it isn't unreasonable for First Central to deduct the premium refund it has paid to Mr M from any settlement it may pay to Mr M after reconsidering his claim. This is because Mr M pays a premium to First Central to provide cover for his vehicle.

First Central avoided Mr M's policy rather than it being cancelled. However if any cancellation markers have been applied by First Central then these should be removed.

Mr M has experienced distress and inconvenience as a result of his policy being avoided and his claim not being dealt with. He has been without a potential claim settlement for a number of months. Mr M has explained that his policy being avoided has caused him distress and made it difficult to purchase a new vehicle. I think Mr M has been caused distress and inconvenience as a result of First Central unreasonably avoiding his policy due to vehicle modifications and it's right it compensates him for this. Taking into consideration what Mr M has said about the impact this has caused him, and the length of the unreasonable delay caused, I think First Central should pay Mr M £200 compensation.

### **My final decision**

For the reasons I've explained I am upholding this complaint. In order to put things right I require First Central Underwriting Limited to do the following:

- Reinstate Mr M's motor insurance policy and reconsider his claim.
- Remove any cancellation markers that First Central Underwriting Limited may have applied.
- Pay Mr M £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 October 2024.

Andrew Clarke  
**Ombudsman**