

The complaint

Mr C complains that Highway Insurance Company Limited (Highway) cancelled his motor insurance policy and refused to pay his claim following a road traffic accident.

What happened

The following is intended as a summary of events only. In brief, Mr C purchased a new car directly from a dealership in March 2023 and took out a policy to insure it around the same time, underwritten by Highway.

Mr C was later involved in a road traffic accident and contacted Highway to make a claim under his policy. But they ultimately declined the claim and cancelled his policy as Highway said they were made aware Mr C had added a vinyl wrap to the car around a month after he insured it with them. Highway said they considered this to be a modification, and had Mr C told them about this, they would have cancelled the policy as they don't allow modifications from the manufacturer's standard specification. As part of this process, Highway refunded Mr C's premiums from the date they considered the vinyl wrap to have been added to the car.

Mr C wasn't happy and complained; he said nobody had told him he needed to tell Highway about the vinyl wrap when he purchased the car and took out the policy. He said he wouldn't have added the vinyl wrap to his car had he known this could invalidate his cover. Highway considered the complaint but didn't uphold it. They said their decision to cancel the policy from the date the modification was estimated to have occurred was in line with their underwriting criteria, as they don't provide coverage for modified vehicles.

Mr C remained unhappy, so he brought the complaint to this Service. An Investigator looked at what had happened and ultimately recommended the complaint should be upheld. She said while Mr C hadn't told Highway about the vinyl wrap being added to the car, she wasn't satisfied they could show this created a fundamental change in the risk being covered under the policy, as the car wasn't stolen, and the accident wasn't due to the car being a different colour from standard. She recommended that Highway should reinstate the policy and consider the claim under the remaining terms, as well as pay £400 for distress and inconvenience caused.

Mr C agreed with the Investigator's recommendations, but Highway didn't. They said Mr C should have informed them of any changes, and had they been made aware of the modification, they would have cancelled cover at that point. They also disagreed with the Investigator's findings in relation to whether the vinyl wrap was material to the accident itself and said they didn't provide insurance for cars that have been changed in any way from standard.

Highway asked for an Ombudsman to consider the complaint, so it'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.

Having done so, I've decided to uphold this complaint.

I should start by explaining how I will be approaching this complaint. I note Highway's final response to Mr C's complaint refers to the questions Mr C was asked when he took out the policy. That would ordinarily lead me to consider The Consumer Insurance (Representations and Disclosures) Act 2012 (CIDRA), which sets out that a consumer needs to take reasonable care not to make a misrepresentation when entering into or varying an insurance policy.

But CIDRA doesn't require a consumer to tell their insurer about any changes to their circumstances once the policy begins. And as it's agreed Mr C added the vinyl wrap to the car after the policy started, I need to consider the conditions within Mr C's policy when thinking about what he was required to do. Additionally, under DISP 3.6.1, my remit is to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. This means I also need to consider the wider aspects of the complaint when reaching a final decision.

The term of Mr C's policy that Highway relied on says:

"You must update your account details with any changes that may affect your policy cover and you must review the information you have provided to us at each anniversary of your policy by checking the information contained within your Schedule and Statement of Fact and ensuring it is still accurate. If we are not informed of any changes or corrections this may affect your ability to claim under your policy.

Changes you must update within your account before continuing to use your car...

If you make any modifications to your car; (my emphasis)."

Within the policy wording, "modifications" is defined as:

"Any alteration to your car from the manufacturer's standard specification. This includes cosmetic changes to bodywork such as body kits, spoilers and alloy wheels or performance changes to the suspension, brakes, exhaust or engine management system. Optional extras fitted at the point of manufacture and retailer fitted accessories are not considered modifications." (my emphasis).

This term set a requirement on Mr C to tell Highway about changes to his car from the manufacturer's standard specification. And having considered everything that happened here, I agree that Mr C didn't tell Highway about the modification to his car. However, I'm not satisfied it would be fair or reasonable for Highway to rely on this term – I'll explain why.

While I don't consider this term to be unusual, I do think it is a significant one. So, I've thought about whether this significant term was drawn to Mr C's attention when the policy was sold. In general, I would consider good industry practice for an insurer to provide a policy summary or key facts document, which included terms that are relevant to the limitation of cover being provided. The term Highway relied on can be found on page 30 of the 33-page policy wording. I don't think this was sufficient to properly highlight it to Mr C.

In addition, I've thought about whether I think Mr C's failure to inform Highway about the modification was material to the loss being claimed for. Ultimately, a motor insurance policy is an agreement which says an insurer will provide cover for certain insured events, such as damage due to a road traffic accident, fire, theft, etc. But I wouldn't consider it fair for an insurer to require their policyholder to disclose every single change that occurs to their vehicle, especially in instances which don't fundamentally change the actual risk they are covering.

Instead, I think it would be fair for an insurer to require their policyholder to tell them about things that fundamentally change the actual risk that is being covered - for example, something that changes the likelihood of loss or damage occurring to the insured vehicle. I say this because Highway would have conducted a risk assessment of the cover they were asked to provide when Mr C took out the policy. And I think any term that allows them to make changes to this cover where the risk they insured hasn't fundamentally changed, is likely to be unfair. Therefore, the question for me to decide is whether I'm persuaded the vinyl wrap Mr C added to his car fundamentally changed the actual risk Highway was covering under the policy. Having thought about this very carefully, I don't think it did.

I'm satisfied the modification Mr C added wouldn't reasonably be considered performance enhancing. I say this because a vinyl wrap wouldn't have changed the output of the car in any way or increased a specific loss from occurring, for example, by making the car faster and therefore more prone to be involved in an accident.

Instead, I think it's fair to conclude that the modification was purely cosmetic in nature. So, I need to think about whether the vinyl wrap would make the car more valuable, or likely to be stolen, and therefore changing the risk Highway was asked to cover. I'm ultimately not persuaded it would, given the only change was the colour of the car itself. Fundamentally, the car was still an expensive, premium vehicle. So, I'm not persuaded a change in colour would increase the likelihood of it being stolen. It follows that I find the vinyl wrap didn't fundamentally change the risk Highway was asked to insure.

I've taken on board Highway's comments around their underwriting criteria, and I can see they've provided evidence which shows they don't provide cover for a car with any modifications from the manufacturer's standard specification. But having thought about this point very carefully, I find that this only demonstrates how Highway assesses a risk, for example, by considering that a modified car is one they don't want to insure. But I'm not satisfied Highway has evidenced this shows the risk actually changed in the specific circumstances of this complaint.

Therefore, for the reasons I've set out above, I don't find that there was an actual increased risk to Mr C suffering loss or damage following the addition of the vinyl wrap to his car. It follows that I think it was unfair to require Mr C to tell Highway about the vinyl wrap being added to the car until it came to renewing the insurance policy.

What was the impact

I recognise Highway's actions have caused trouble and upset to Mr C. I can only imagine how difficult the situation has been on him and while I haven't detailed everything here - I've considered how Mr C was affected. Ultimately, I find that Highway declining cover for Mr C's claim was unfair, so I think they should pay compensation. I can see the Investigator previously recommended they should pay £400. And having considered Mr C's testimony, I'm satisfied this is fair and reasonable in the circumstances and reflects the impact Highway's actions had on him.

Putting things right

Highway should deal with Mr C's claim in line with the remaining terms of the policy. They can deduct any premium refund they gave from any settlement paid – putting both Mr C and Highway back to their original positions prior to the policy being cancelled.

And as I don't think it was fair for Highway to cancel Mr C's policy, they should remove all record of the policy's cancellation from internal and external insurance databases.

Mr C has said he's incurred additional costs in respect of hire charges and storage costs given his car is unroadworthy. I'm satisfied that if Highway hadn't declined his claim, Mr C wouldn't have incurred these costs. It follows I think it's fair for Highway to reimburse those costs, subject to Mr C providing evidence of paying them.

My final decision

For the reasons I've given above, my final decision is that I uphold this complaint. I direct Highway Insurance Company Limited to:

- Reconsider Mr C's claim without reliance on the modification clause, and in line with the remaining terms of the policy.
- Remove the policy's cancellation from internal and external insurance databases;
- Reimburse Mr C's hire charges and storage costs incurred, subject to Mr C providing evidence of these losses to Highway; and
- Pay £400 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 January 2025.

Stephen Howard
Ombudsman