

The complaint

Mr B complains that First Central Underwriting Limited declined his claim and avoided his car insurance policy.

What happened

Mr B took out a motor insurance policy with First Central through a comparison site on 28 October 2023, the policy starting on 2 November.

In January 2024 he was involved in an accident and made a claim.

First Central's engineers examined the car on 30 January and said that there were undeclared modifications.

First Central said he'd answered the question it asked about modifications to the vehicle incorrectly. And it considered this to be a careless qualifying misrepresentation, which entitled it to avoid the policy and decline the claim. They also refunded the premiums back to policy inception.

Mr B brought his complaint to us and our investigator thought it shouldn't be upheld and that Mr B had made a careless misrepresentation.

Mr B doesn't agree with the investigator and has asked for an ombudsman's decision.

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.

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. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

First Central thinks Mr B failed to take reasonable care not to make a misrepresentation when he declared there were no modifications to his car during the online application process.

So, I've looked at what the comparison site asked, and the reasonableness of the answers Mr B gave.

Mr B used a comparison website and First Central has shown us the question asked was "Has the car been modified in any way", to which Mr B has responded "No"

There is a then pop-up box which says:

"A vehicle is considered modified if it has been changed in any way since it was first supplied by the vehicle manufacturer. This would include changes to the bodywork, suspension or brakes, cosmetic changes and changes to the engine management system or exhaust system. If you are unsure whether changes to the vehicle are classed as modifications please check with your chosen provider before purchasing."

The engineers report shows that there are several modifications to the car – a spoiler kit, rear privacy glass, door wind deflectors, lowered suspension, air filter induction system and black headlight eyebrows.

Mr B's representative says that he bought the car from a dealership and didn't realise that there were modifications on the car. He assumed it was a standard model.

I've located the advertisement from when Mr B bought the car, and I can see that the privacy glass, rear spoiler and lowered suspension are listed on the advert, so the car already had the modifications on it when it was purchased by Mr B. They aren't highlighted on the advert as being modifications and Mr B has also confirmed that his father was with him when he bought the car, and the garage didn't mention that these were modifications. However, First Central say that it should have been obvious to him that there were modifications.

Mr B's representative argues that it wasn't obvious to him because Mr B is a vulnerable adult who is unable to read and write and he has the intellectual ability of a primary school child, so I can understand why he may not have been aware of the modifications.

However, given that he does have a learning disability and his representative says he can't read, I would have expected Mr B to have sought support when obtaining the online quote for insurance to make sure that he is answering the questions accurately. I haven't seen any evidence that he did this, and Mr B has confirmed that he did this alone. And so while I can understand how this misrepresentation happened, I think that not obtaining help or support in the circumstances if he couldn't read the questions, he wasn't taking reasonable care to ensure that the information he was providing was correct.

Had he done so, the information in the pop-up box defining modifications and asking about changes to "bodywork, suspension and brakes" would have alerted him to what he needed to declare. As the advert for the car does say it has "lowered suspension" I would have expected a reasonable consumer to have queried whether this was a modification that needed declaring.

First Central Insurance has provided evidence that if they had known about the modifications, they would not have provided cover for Mr B.

This means I'm satisfied Mr B's misrepresentation was a qualifying one.

I have then thought about whether this misrepresentation was deliberate, reckless or careless.

First Central has said Mr B's misrepresentation was careless and I agree. Mr B knows that he finds reading difficult and I consider that in not getting help and support to answer questions that entered him into a legally binding contract, he wasn't taking sufficient care to ensure the responses he was giving were accurate. He has support available from family which he used to buy the car; he didn't use on this occasion. I consider that makes this a careless misrepresentation rather than deliberate or reckless.

Mr B's representative says that the onus should be on First Central to identify vulnerable customers and offer support in line with the FCA's guidance. When a potential customer uses a comparison website it makes it more difficult for insurers to identify this at the outset as the comparison website sets the questions to ask, but having chosen First Central, Mr B would have been passed through to their online service to finalise the purchase, and he would have had the vulnerable customers support flagged to him. The website has a page on vulnerability and accessibility which includes videos as well as written explanations of how to access support. He didn't, however, make use of this service.

I can also see that there are several calls with First Central before the accident, and I've listened to them. Although Mr B authorises someone to speak on his behalf in these calls, there is no mention by him or his representative of him being vulnerable or having literacy difficulties. And so, I don't think that it is fair to say that First Central should have done more to support Mr B during the online purchase process when they have no knowledge of his difficulties, and he didn't make them aware despite prompts.

As I'm satisfied Mr B's misrepresentation should be treated as careless, I've looked at the actions First Central can take in accordance with CIDRA.

I'm satisfied that they are entitled to avoid the policy in accordance with CIDRA, and this means that, in effect as his policy never existed, First Central does not have to deal with his claim. As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing First Central to rely on it to avoid Mr B's policy produces the fair and reasonable outcome in this complaint.

I appreciate how strongly Mr B's representative feels about this, and I understand that Mr B has been impacted as he can now not obtain reasonably priced insurance. However, I can only uphold a complaint when I consider that a business has made an error in their decision making, or in the way they have treated a customer, and I can't see here that First central have made errors in either the determination of the claim, the voidance or in the service offered to Mr B.

My final decision

For the reasons set out above, I've decided not to uphold Mr B's complaint about First Central Underwriting Limited and so they don't need to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 March 2025.

Joanne Ward
Ombudsman