

The complaint

Mr B has complained that AXA Insurance UK Plc unreasonably and unfairly cancelled his policy as if it never existed following his claim as a result of an accident. This was due to the fact it believed his car was modified and that he had an unspent non-motoring conviction on his record.

What happened

Mr B was involved in an accident where his car damaged some property. He made a claim to AXA on 7 August 2023.

In investigating his claim, AXA said it discovered his car had been modified with an estimate of modifications costing about £12,000. It also said Mr B had an unspent non-motoring conviction which would not be spent until 2029. On this basis it refused to pay his claim and cancelled his policy as if it never existed from 24 October 2023. The policy renewed on 20 March 2023. This is because it didn't insure modified cars or consumers with such a non-motoring conviction as Mr B had.

At this time its engineers had classified his car as a category B total loss. AXA said it had also received a substantial claim from the property owners of the property that Mr B's car had damaged which would now need to be dealt with by Mr B himself.

Mr B complained but AXA wouldn't change its stance. Although it did pay him £25 for its delay in dealing with his complaint. So, Mr B brought his complaint to us. The investigator was of the view that AXA didn't ask a clear question of Mr B as to any changes since he last renewed his policy as required under The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). As a result, AXA requested an ombudsman's decision, so Mr B's complaint was passed to me to decide.

I issued a provisional decision on 26 November 2024, and I said the following:

'Having done so I'm not intending to uphold this complaint. I consider AXA did adhere to the requirements under CIDRA. Therefore, it wasn't acting unfairly in cancelling Mr B's policy as if it never existed. I'll explain why later below.

First however, I consider on the basis of the evidence provided from the government website as regards a DBS check, that it's clear Mr B's conviction will not be spent until 2029. AXA's underwriting guide clearly shows it will not insure consumers with such a criminal record.

Secondly on the evidence before me from AXA's engineer, it's also clear the entity from who Mr B bought his car in 2021, did modify it significantly. Visually there are different alloy wheels, side steps, front and rear badges, extra lights above the windscreen, the vehicle was originally brown now it's blue via a wrap or partial respray, it has smoked rear lights and possible exhaust modifications. It's estimated the modifications would be about £12,000. AXA's underwriting guide shows that it will not insure modified cars.

Insurers are entitled to decide what risks they wish to insure and what risks they don't want to insure. That's part of their commercial discretion and this is permitted by the regulator, The Financial Conduct Authority. In order to treat all consumers fairly insurers are required to list such issues in their underwriting guide which is also commercially sensitive so as to ensure all consumers are treated equally and no consumer is singled out and treated differently. I'm satisfied that AXA has done this cogently and properly here.

Now turning to CIDRA and AXA's duties under it which I consider is the main issue for me to consider in this decision.

As the investigator explained, CIDRA requires consumers to answer all the questions asked honestly and truthfully so as to ensure they take reasonable care not to make a misrepresentation when applying for an insurance contract or policy. Likewise, the insurer must ask clear questions. This also applies to renewals as each policy lasting for a year is a new insurance contract providing cover for that coming year only and nothing else.

If it's obvious that the insurer AXA asked a clear question or questions, and that Mr B didn't answer the question(s) truthfully then CIDRA calls that a qualifying misrepresentation. The remedies available to AXA depend on what it would have done differently if it had known the correct answer at the time of the application or renewal. If it would have never offered any cover at all, then it's entitled to cancel the policy as if it never existed. If it would have offered cover but at a higher premium, then it's entitled to pay any claim on a proportionate basis on the basis of the premium that was paid as in discounting the claim payment by the percentage of the premium not paid. And if it would have offered different terms such as excluding cover for something then it's entitled to exclude that particular thing from cover for that policy year.

If the insurer considers the misrepresentation merely careless, then it refunds the premium paid. If the insurer considers the misrepresentation fraudulent then it can retain the premium paid. Here, AXA returned any premium he paid back to Mr B. I am satisfied that AXA wouldn't have insured Mr B if it had known his car was modified and that he had an unspent conviction. So, the remaining issue is whether AXA asked clear questions when Mr B's policy was due to automatically renew in March 2023.

I consider that it did. This is because AXA sent Mr B a renewal invitation on 23 February 2023, which urged Mr B to log on to his online account to check and if necessary, update any policy information that may be incorrect. The email sent warns that that cover can be affected if any information is incorrect. AXA included a copy of the Insurance Product Information Document which clearly details under the policyholder's obligations the following:

- You must give complete and accurate answers to any questions we may ask you at the start of and when amending or renewing your policy. You must update this information if it changes. This includes:*
 - updating your address or occupation,*
 - claim or conviction details,*
 - driver changes,*

- *changes or modifications to your car or how you use it.'*

The renewal reminder sent on 13 March 2023 explained the policy was being renewed and again reminded Mr B to check his details. The schedule was sent on 20 March 2023 which confirmed Mr B's car had no modifications. And with that AXA sent a renewal acknowledgement letter again confirming Mr B's obligations to check his details including claim and conviction details plus changes or modifications to the car. Like every insurer of motor policies AXA provides a 14-day cooling off period to again check and amend any details.

I don't consider AXA needs to present its renewal in a specified format as the investigator thought. I consider as it's an online operator for the product Mr B chose, this method of policy renewal with all the varying repetitions of the need of the policyholder to check the information held is perfectly adequate and in line with what CIDRA requires.

Therefore, I consider there were qualifying misrepresentations under CIDRA by Mr B when this policy renewed in March 2023 about his conviction plus the fact this car was modified which he added to the policy mid-term in December 2021. In conclusion I don't consider AXA did anything wrong in cancelling this policy as if it never existed and therefore refusing to deal with Mr B's claim. I note it returned Mr B's car back to him after sorting out the write off category too.'

Mr B responded disagreeing with my provisional decision. He produced a letter from his solicitor explaining his conviction would be spent by 17 February 2022. This is because the conviction was handed down on 17 February 2012. The offence itself was committed in 2010.

He also explained his car wasn't modified by him at all during the time he owned it. He said the modifications which were on the car when he bought it didn't enhance its performance or had any impact on driving standards. He said the main manufacturer sells this accessory and it can be added into the build (of the car) process too.

So, we put this to AXA who responded that given the length of the custodial sentence Mr B had, such a conviction is never spent in this way. It further confirmed that the modifications on Mr B's car did indeed enhance its attractiveness irrespective of anything else so it would pose a different type of risk. It also confirmed that the company who did the modifications weren't in any way attached to the main manufacturers.

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 again, I remain of the view that I'm not upholding this complaint. Sadly, for Mr B the law is clear that any conviction with a custodial sentence over four years is never rehabilitated or 'spent'.

Under the Rehabilitation of Offenders Act 1974 it says the following:

'5. Rehabilitation periods for particular sentences

(1) The sentences excluded from rehabilitation under this Act are –

- (a) a sentence of imprisonment for life;*
- (b) any of the following sentences, where the sentence is imposed for an offence specified in Schedule 18 of the Sentencing Code (serious violent, sexual and terrorism offences) or a service offence as respects which the corresponding offence is so specified –*
 - (i) a sentence of imprisonment for a term exceeding 4 years:’*

Therefore, as Mr B’s sentence was for 10 years and seven months according to the reports of it, it remains that AXA was correct in saying this conviction wasn’t ‘spent’ at the time Mr B applied for his policy and when it automatically renewed. It now turns out with further careful examination of the legislation around this issue that Mr B’s conviction will never be ‘spent’ at all. Therefore, it would need disclosing if the question was asked. In my provisional decision I concluded that AXA had asked clear questions over this matter to include reminding Mr B to update it as regards claims and conviction details.

As regards the modifications Mr B had, it remains the fact that it was heavily modified to the value of around £12,000. Such modifications don’t have to enhance the performance of the car either, they can simply be something which makes the car stand out in comparison to unmodified cars of the same make and model. Such modifications are done solely to make it more attractive to a sector of the population which increases its value to that sector and indeed changes its risk profile from an insurer’s perspective. In conclusion, I consider Mr B’s car was so modified and he ought to have disclosed it. I don’t consider the company who undertook the modifications is associated with the main manufacturer either.

AXA is completely within its rights to refuse to insure modified vehicles and to refuse to insure people with a non-motoring conviction if it wishes. Therefore, in this instance I don’t consider it did anything wrong in cancelling Mr B’s policy as if it never existed, in the way it did.

My final decision

So, for these reasons, it’s my final decision that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 5 February 2025.

Rona Doyle
Ombudsman