

The complaint

Mr B is complaining AXA Insurance UK Plc ('AXA') avoided his car insurance policy.

What happened

Mr B took out a car insurance policy. He took it out through a third party who he believed was a broker. AXA later wrote to Mr B to say it was avoiding his policy because it said he'd provided a fraudulent document to demonstrate the No Claims Discount ('NCD') he'd declared. It also said it wouldn't refund the premium Mr B paid.

Mr B thought this was unfair as he said it was the broker who did this. He said it's unfair that he's being penalised for something someone else did. And he said not receiving a premium refund has had a significant impact upon him. AXA maintained it was entitled to do this, so Mr B referred his complaint to this Service.

Our Investigator upheld this complaint. She said she hadn't seen anything to show Mr B had been complicit in the fraud. So she thought it was unfair for AXA to have treated him as a fraudster. And she thought it should refund the premium Mr B had paid and pay him £200 in compensation.

AXA didn't agree with the Investigator and raised the following points:

- It had many doubts over this case and overall, didn't think Mr B had just been careless in this misrepresentation.
- It said its concerns were first raised as it said the databases had records suggesting Mr B had had two policies cancelled previously, which is why it sought to carry out further verification checks.
- It said the evidence suggested that "the broker" did the initial data input to gather the quote, but it was passed back to Mr B to buy it. It said, Mr B could and should have verified the information at that point.
- It said it had several telephone calls after the avoidance which it believed casts doubt over Mr B's testimony he wasn't able to contact the broker.
- AXA said in one call it called the phone number initially given by Mr B when the policy was taken out but the person who answered initially said they didn't know Mr B but when queried on this, the person then said he was actually Mr B's friend. In another call they spoke to someone who said they were Mr B. But when asked what the make of car insured was, the person didn't know and seemed to have had to look it up.

I issued a provisional decision not upholding this complaint and I said the following:

"The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate – as AXA asserts in this case – and the insurer can show it would have at least offered the policy on different terms, it's entitled to avoid the consumer's policy and retain the premium paid. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

AXA believes Mr B deliberately provided false information to obtain a cheaper premium, which is evidenced by the fact a fraudulent document was provided. Mr B doesn't dispute his broker provided a fraudulent document, but he doesn't believe he should be penalised for the actions of someone else.

While I note Mr B's comments, the broker was acting on Mr B's behalf in arranging the policy. The broker deliberately and knowingly provided false information to AXA and ultimately did so on Mr B's behalf. So, under the strict application of CIDRA, AXA was entitled to treat the misrepresentation as deliberate, avoid the insurance policy and retain the premium. And, any concerns Mr B has are a matter between him and the broker.

However, this Service will always think about what's fair and reasonable. In this case, I've thought about whether Mr B was an innocent victim in this instance – i.e. he was unaware of what was happening and has no ability to have recourse with the broker. I don't think that's the case here.

AXA has provided two telephone calls that I've listened to and I'm satisfied they support AXA's concerns. The first telephone call took place two days after AXA avoided the insurance policy and is allegedly Mr B speaking with AXA. AXA disputes this and believes it's actually the broker speaking. I think that's fair. In the first instance, one of the security questions AXA asks is the make and model of the vehicle. The individual initially provides an incorrect vehicle. AXA says that's wrong. At this point the individual spends a period of time before answering with the correct vehicle – seemingly looking up what the car is. I think Mr B would without doubt have known the vehicle he drives and would not have acted in this way if it was him on the call. Secondly, Mr B was a 21 year old male. I'm satisfied that it's most likely that the individual speaking with AXA on that call was not likely to have been 21 years old. The second telephone call I listened to also verifies AXA's concerns as set out above.

Mr B has said that he isn't able to contact the broker. But I'm not persuaded that's the case. And given all the concerns AXA has fairly raised, I think it's more likely than not that Mr B was at least partly aware that AXA had been given incorrect information. Further to this, I'm not persuaded his testimony surrounding what happened after the avoidance is persuasive.

As, I said above, AXA has acted in line with its rights under CIDRA. Taking everything into consideration, I don't see any reasonable reason to deviate from this. So it follows that I think it was fair it treated the matter as deliberate misrepresentation and retained the premium."

Mr B didn't agree with my provisional decision and raised the following:

- He'd never had any policies cancelled before. He said he'd only ever had one policy

before as a named driver.

- He disputed the application was passed back to him to buy. He said the broker was granted unimpeded access to all pertinent information, including his email, and the broker alone who sought out the insurance policy for Mr B.
- He said my comments surrounding the telephone call are conjecture. He reiterated he contacted the broker through social media and he maintained that the follow up messages showed he was unaware of what had happened. He's unhappy that I haven't given any consideration of these messages. And he said the broker blocked him as soon as he raised the issue of the NCD.
- He said the number AXA called was not his number. He believes it must have been added by the broker. He said he warned AXA that this might happen, but AXA insisted on using the telephone number.
- He maintained it was him who called AXA. And he said AXA had refused to provide him that telephone call.
- He believes my reference to "strict application" implies an unquestionable rigidity in the way I have assessed his complaint. He said there is no evidence to show he deliberately provided false information. He said exercised he reasonable caution, based on advice given him from his family to reach out to the broker.
- He said he never saw the policy documents, so could not know the broker had provided AXA with false information. He reiterated he provided the broker the correct information so he thinks it's unfair he's the one who suffering such severe implications.

AXA accepted my provisional 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.

I've thought about everything Mr B has said, but I don't think Mr B has provided anything new. So I've come to the same conclusion as I did before.

As I said in my provisional decision, the broker was acting on Mr B's behalf in applying the policy. In law, in relation to AXA's rights under CIDRA, it matters not whether Mr B gave the correct information to the broker. AXA was given false information by the broker and Mr B is responsible for the actions of the broker. There is no dispute that the broker deliberately provided false information so this can't be considered anything other than deliberate misrepresentation in law. But, as I also set out, this Service will always think about what's fair and reasonable. And in doing so we'll consider whether Mr B was just an innocent victim of what's happened. But, for all the reasons I've set out in my provisional decision, I can't say this was the case.

Mr B has said I have ignored copies of the messages he sent to show the broker stopped speaking with him. I assure Mr B I did consider these, but my concerns surrounding the subsequent telephone calls casts doubt on this testimony and I cannot ignore this. Mr B maintains that it was him who was on the telephone call, but I'm satisfied it was not. As I said, I cannot accept that Mr B would not have known the make and model of the car he'd insured. And I'm also satisfied it was not a 21 year old person on the telephone. Mr B hasn't given me anything to say this was an unfair conclusion.

Mr B has disputed the other concerns AXA have raised. But I'm not going to comment on them further as my concerns surround the telephone calls remain.

So, while I have noted and considered Mr B's comments in response to my provisional decision, I still cannot fairly say AXA has acted unfairly in this case.

My final decision

For the reasons I've set out above, 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 4 March 2025.

Guy Mitchell
Ombudsman