

The complaint

Mr F complains that First Central Underwriting Limited (First Central) avoided his car insurance policy and refused to pay his claim.

What happened

Mr F took out a car policy with First Central through a price comparison site in January 2022. Mr F's policy renewed in January 2023. Mr F was sent a policy schedule which recorded his 'Marital status' as 'Common Law' and recorded that the 'Registered Owner' and 'Keeper' of the car was Mr F's 'Spouse'.

Following an incident involving his car in December 2023, Mr F contacted First Central to make a claim. During investigation of Mr F's claim, First Central was informed that the V5 document was not in Mr F's name. Mr F was sent an email from First Central asking:

'Was the ph still in a relationship/ living with the ex girlfriend and when did this change?'

Mr F's response:

'I'm not really sure why this is relevant but yes we were and no we weren't ever living together.'

In February 2024 Mr F's policy was avoided, and his policy premium refunded. Mr F complained about First Central's decision to avoid his policy, and not pay his claim.

In June 2024 First Central said that during the purchase of Mr F's policy in January 2022 he was provided with the option to select 'Someone else' on the comparison website in response to the question about who the register keeper and owner of the car was. First Central said Mr F didn't do this. Mr F was told if he had disclosed 'Someone else', then the policy wouldn't have been offered. First Central informed Mr F that its decision to avoid his policy and not pay his claim was fair.

Mr F brought his complaint to us, and our Investigator thought First Central had acted reasonably and didn't ask it to do anything in settlement of Mr F's complaint. Mr F asked for an ombudsman's decision.

I issued a provisional decision on Mr F's complaint. This is what I said about what I'd 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 F failed to take reasonable care not to make a misrepresentation when he completed his online application form through the comparison website and answered questions about ownership of his car.

It's not disputed that the V5 wasn't in Mr F's name at the time of his application for insurance in January 2022. So Mr F made a misrepresentation. But in order to say that Mr F made a qualifying misrepresentation, I'd need to consider whether Mr F took reasonable care not to make a misrepresentation. The test for whether or not the consumer took reasonable care is set out in CIDRA. The standard of care required is that of a 'reasonable consumer'. This means we need to consider what a reasonable consumer would have done in the circumstances.

I have seen that in the final response letter sent to Mr F, First Central said it had reviewed the options available to Mr F when answering the question about who the register keeper and owner of the car was. First Central said the option of 'Someone else' was available on the comparison website, and Mr F failed to select this.

First Central has been asked to provide evidence of the online sales journey supporting the information visible to Mr F at the time the policy was taken out in January 2022, and ultimately relied on by First Central as part of its decision to avoid Mr F's policy. In response, First Central has explained that it is unable to confirm the options that would've been available to select in January 2022. It has also said the options relating to registered keeper/owner have remained the same. But despite asking for clarification of the options Mr F would've seen and selected from the dropdown options available, this evidence has not been provided.

First Central says Mr F would've been able to choose from a list of options including 'Spouse'. But I haven't seen any evidence to demonstrate this. This evidence is vital in understanding how clear and specific the question and corresponding options about ownership of the car were at the time of being presented to Mr F.

In the final response letter, First Central inform Mr F that he ought to have selected 'Someone else' from the options available to him. But in correspondence with this Service, First Central has explained Mr F selected 'Spouse' in response questions about the registered keeper and owner of the car. But it hasn't provided any evidence of the specific question that was asked on the comparison website which led to First Central recording the answer to registered owner and keeper as 'Spouse'. This evidence also goes against what Mr F was told in the final response letter about the set up of the policy and what question Mr F was asked, and the options he was given.

First Central was also asked to comment on the information from the Statement of Fact sent to Mr F following renewal of his policy in January 2023. It's accepted that this document records Mr F's marital status as 'Common Law' and shows the 'Registered Owner' and 'Keeper' of the car as Mr F's 'Spouse'. But there isn't any evidence from First Central to support when and where in the online sales journey Mr F selected these options. First

Central hasn't provided evidence of screenshots to support where in the online sales journey Mr F would've selected the answer 'Common Law' and 'Spouse' which led to the recording of this information in the Statement of Fact.

The standard of care is that of a reasonable consumer. Having considered the evidence from First Central about the questions presented, and Mr F's response, I'm persuaded Mr F took reasonable care in providing a response. It's still not clear what specific responses Mr F gave First Central during the online sales process. As both the final response letter, and First Central's response to this Service provides different information.

Given the lack of clarity on the questions Mr F was asked about ownership of the car, I'm persuaded Mr F took reasonable care in line with CIDRA. This is based on his testimony about the options presented, and what he would've selected which best fit his circumstances at the time. It follows that the actions taken by First Central are unfair, and First Central has no remedy under CIDRA.

I'll take into account any further information I receive in response to this provisional decision but based on what I've seen so far, I intend to require First Central to treat the policy as having not been avoided and consider his claim in line with its policy terms.

Mr F has described the impact on him as a result of First Central avoiding his policy, and refusing his claim. Having considered what's happened, I'm minded to ask First Central to pay Mr F £300 compensation in recognition of its error, and the impact on Mr F. This amount recognises the unfair avoidance of Mr F's policy, and the stress caused to Mr F because of First Central's decision to not pay his claim. It also recognises the impact on Mr F as a result of having to chase First Central for an explanation about avoidance of his policy, which wasn't received until June 2024- several months after his policy had been avoided, and claim rejected.

Putting things right

I am minded to ask First Central to:

- 1. Amend records and any central databases to make sure any record of the avoidance is removed;*
- 2. Provide Mr F with a letter saying that the avoidance is removed for him to show to future insurers;*
- 3. Consider Mr F's claim fairly in line with the terms and conditions of the policy; and*
- 4. Pay £300 distress and inconvenience.*

My provisional decision

For the reasons given above, I am minded to ask First Central Underwriting Limited to follow my directions for putting things right as detailed above.

The responses to my provisional decision

I invited both Mr F and First Central to respond to my provisional decision. Mr F accepted my provisional decision. First Central disagreed with the provisional decision. First Central said that Mr F did not have an insurable interest in the vehicle, and therefore he couldn't insure something that he didn't 'own/have a financial interest in'.

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 carefully considered all the points raised by First Central. I've focused my comments on what I think is relevant. If I haven't commented on any specific point it's because I don't believe it has affected what I think is the right outcome.

First Central's position is that at the time of taking out insurance Mr F didn't have an insurable interest in the car. I recognise First Central's position on Mr F's circumstances at the time of taking out insurance. But without having sight of the options available to Mr F when taking out insurance, I'm unable to say that Mr F was clearly informed about the options to choose from, the importance of these, and whether what he selected best represented his circumstances at the time.

I have also seen that in responses to this Service's requests for information, First Central has changed its explanation about what Mr F selected at the time the policy was taken out, and the impact on his policy. This was put to First Central to provide clarification on, but it didn't provide any.

In earlier correspondence First Central advised that the underwriting team had confirmed that if Mr F disclosed someone else as the owner/ keeper than insurance wouldn't have been provided. However, in later correspondence, First Central said Mr F had disclosed the owner/ keeper as someone else.

I'm persuaded it is this lack of clarity which begs the question about how the information was presented to Mr F, whether it was clear and direct, and what Mr F reasonably understood from the question. All of this remains unclear, and the evidence doesn't support First Central's position about Mr F making a qualifying misrepresentation under CIDRA. So it can't rely on the remedies under CIDRA for the purposes of Mr F's policy, and claim.

In the absence of CIDRA, I've applied our remit of fair and reasonable. And based on the conflicting and incomplete evidence provided by First Central, I'm unable to agree with First Central's handling of Mr F's policy and claim being in line with what this Service would expect in the circumstances.

The avoidance of a policy, and decision not to pay a claim, can have profound financial and practical consequences for a consumer. I don't think First Central has acted reasonably in avoiding Mr F's policy, and not paying his claim, based on the evidence relied on about what he disclosed at the time of application. There isn't conclusive evidence to say what options Mr F had, and based on First Central's responses to this Service, what options he actually selected from the website. So First Central's reliance on this evidence to justify the serious actions it has taken isn't fair or reasonable.

I've carefully considered First Central's submissions. But I don't think these comments materially change the outcome of Mr F's complaint, or my direction for putting things right. So I'll be directing First Central to put things right as set out in my provisional decision.

Putting things right

First Central Underwriting Limited is directed to:

1. Amend records and any central databases to make sure any record of the avoidance is removed;

2. Provide Mr F with a letter saying that the avoidance is removed for him to show to future insurers;
3. Consider Mr F's claim fairly in line with the terms and conditions of the policy; and
4. Pay £300 distress and inconvenience.

My final decision

For the reasons provided I uphold this complaint.

First Central Underwriting Limited is directed to follow my directions for putting things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 14 March 2025.

Neeta Karelia
Ombudsman