

The complaint

Mr T complains that Highway Insurance Company Limited ('Highway') voided his motorbike insurance policy and declined his claim.

What happened

In March 2022 Mr T took out through a broker a motorbike insurance policy underwritten by Highway.

In August 2023, he was involved in an accident, causing damage to his bike. So, he contacted Highway to make a claim.

Highway arranged for the damage to Mr T's bike to be assessed. But its repairers found there were aftermarket parts on the bike. The repairer reported this to the broker to check if these parts were disclosed when the policy was taken out, and the broker confirmed they were not.

Highway then wrote to Mr T in December 2023 to inform him it had decided to void his policy and that it would not be dealing with his claim. Highway said this was because Mr T had agreed to an assumption when he took the policy out that his bike was unmodified, and had Mr T informed it about the modifications to his bike, it would not have offered him a policy. Highway also said because it believed it had recklessly been misled, it wouldn't be returning any premium to Mr T.

Mr T complained about this decision, saying the parts had been present when he'd bought the bike and didn't affect the bikes performance, so he didn't think they needed disclosed.

Highway provided a final response to Mr T's complaint in January 2024 maintaining its decision to void the policy and decline the claim. It said an exhaust and power commander fueling module fitted to the bike were performance enhancing and Mr T had spoken before with a previous insurer who had told him the modifications were performance enhancing. It also said changes to aesthetics or sound are also considered changes to standard specification.

Our investigator didn't think Highway had acted unfairly. He said he'd considered if Mr T had made a misrepresentation under The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') and thought that he had as Mr T knew about the alterations to the bike and should have disclosed these instead of agreeing to the assumption on the website. And, he was satisfied if Mr T had done this, Highway would not have offered him cover. He also thought Mr T's misrepresentation was reckless, since Mr T knew about the alterations to his bike, but chose not to disclose them.

Because Mr T didn't agree, the complaint was referred 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, while I understand Mr T will be disappointed, I've decided not to uphold this complaint. I'll explain why.

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.

Highway thinks Mr T failed to take reasonable care not to make a misrepresentation when he took out his policy because he didn't disclose modifications to his bike.

When Mr T took his policy out, he was asked to agree if a list of assumptions were correct. This list included the following assumption:

"Your vehicle has not been modified in any way from the manufacturer's standard specification."

Mr T was required under CIDRA to take reasonable care not to make a misrepresentation. Highway thinks that he didn't do so, because it thinks the bike was modified in a way it wouldn't have accepted, and instead of disclosing this, Mr T agreed to the assumption to say the bike hadn't been modified in this way.

Mr T doesn't dispute agreeing to the assumption. But he says his bike wasn't modified from the manufacturer's specification. He also says guidance on the brokers website describes a modification as something which changes the performance and/or handling of the motorbike – which he says the parts on his bike did not do.

So, I've firstly considered if Mr T failed to take reasonable care not to make a misrepresentation.

Mr T's bike was found to have the following changes: an exhaust full system, a power commander, a rear shock, master cylinders, callipers and discs, chain adjusters, upgrade rear sets, carbon rear and front huggers, carbon brake lever guards, an aftermarket seat cover, tail tidy and tank grippers.

Mr T doesn't dispute these changes were present to his bike, or that he was aware of them. And while Highway's engineer said some of the parts were for adjustability and aesthetics, a power commander and exhaust modification were upgrades which affected performance.

Mr T says that the changes to his bike didn't increase its performance from standard factory output, so he doesn't agree they affected its performance or were a change from the manufacturer's standard specification.

Highway's engineer said the power commander and exhaust system modification would cause an increase in power and increase in speed by the power commander remapping and changing settings to the bike's computer and the exhaust modification allowing gas to escape quicker from the bike preventing it from choking and cutting out due to the operation of the power commander.

On balance, I'm more persuaded by the evidence Highway has provided here. I think the modifications made to the bike went beyond cosmetic modifications and based on the engineers' comments likely did have an impact on the bike's performance. So, I think the bike reasonably could have been considered by Highway to have been modified away from the manufacturer's standard specification. And because Mr T agreed to the assumption saying it hadn't been, even though he knew the bike had these modifications, I don't think he took reasonable care not to make a misrepresentation.

I've next considered if the misrepresentation was a 'qualifying' misrepresentation – meaning it would have made a difference to how Highway would have treated the policy had the misrepresentation not been made.

Highway has provided confidential, business sensitive information which shows that it would not have offered Mr T a policy had it been made aware of the modifications to his bike. Since Highway wouldn't have entered into the contract with Mr T had the misrepresentation not occurred, I'm satisfied the misrepresentation was a qualifying misrepresentation.

I've next considered if the misrepresentation was deliberate or reckless, or careless.

Highway said the misrepresentation was reckless because Mr T was aware of the changes to the bike but didn't disclose them anyway and that Mr T could have sought clarity as he had done in the past on previous policies. Highway also commented that Mr T had disclosed these modifications in the past to a different insurer.

Mr T says he didn't intentionally make any misrepresentation and that when his bike was being valued, he was forthcoming in providing the specification of the bike including photographs.

CIDRA says:

"A qualifying misrepresentation is deliberate or reckless if the consumer—

(a)knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and

(b)knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer."

I acknowledge Mr T says he didn't intentionally mislead Highway. But I don't think Highway has claimed that he did as it said it thinks the misrepresentation was reckless.

I think it was reasonable for Highway to treat the misrepresentation as reckless. I say this because Mr T's bike had various modifications, some of which were cosmetic, but others of which were mechanical and affected how the bike performed. Mr T was asked if he agreed to an assumption that the bike wasn't modified in a way from the manufacturer's specification, and he agreed to this assumption. Mr T said that he had disclosed his modifications with a previous insurer who provided him cover and said he assumed that the bike being within 'stock power' did not form a modification.

But different insurers will have different approaches to risk and while the modifications may have been acceptable to another insurer, they were not to Highway. So, I think by not disclosing the modifications to Highway when the policy was being taken out, or even checking with it if the modifications were acceptable, Mr T didn't care if the information was misleading or relevant to Highway.

For the reasons I've set out, I find that Mr T made a qualifying reckless misrepresentation to Highway about the modifications to his bike. Highway voided his policy because of this and refused his claim, in addition to retaining his premium. These actions were in line with what CIDRA allowed Highway to do in the circumstances. So, I don't find it acted unfairly.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 April 2025.

Daniel Tinkler
Ombudsman