DRN-5823966

## The complaint

Miss O complains about how First Central Underwriting Limited (1st Central) avoided her motor insurance policy and declined her claim.

## What happened

In March 2024 Miss O took out a motor insurance policy via an online intermediary - who I shall refer to as C. For the period in question, Miss O's motor insurance policy was underwritten by 1st Central. When Miss O took out the motor insurance policy via C, she wasn't yet in possession of the vehicle she'd purchased, which was the subject of the policy.

In August 2024 Miss O's car was involved in an incident, so she made a claim under her motor insurance policy. When Miss O's car was with the garage for repair, 1st Central noted there was a modification to the car which hadn't been disclosed when the policy was taken out. Namely a remapped engine control unit (ECU).

As a result of the modification, 1st Central said it wouldn't have offered insurance had the correct information been provided when the policy was taken out. It therefore declared the policy void from inception and returned Miss O's premium.

By 1st Central avoiding Miss O's policy, it in effect was saying the policy had never existed and there was no policy for her to claim under. Therefore 1st Central said it wouldn't be dealing with Miss O's claim.

Miss O complained to 1st Central, but it didn't change its decision. It maintained Miss O must have reasonably known about the modification because the vehicle was sold with its modification clearly outlined in the advert. And if 1st Central had been aware of the modification from when the policy was taken out, it wouldn't have offered her cover.

Dissatisfied Miss O brought her complaint to this Service.

Our Investigator said he thought 1st Central had acted fairly and reasonably when concluding Miss O had made a careless misrepresentation when taking out her policy and in applying the remedies available under CIDRA.

Miss O didn't agree with our Investigator. She said if she'd known of the modification to the car it would've been declared.

I issued a provisional decision in September 2025. I said;-

*"CIDRA*

*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.*

*If a consumer fails to take reasonable care not to make a misrepresentation, the insurer has certain remedies provided the misrepresentation is what CIDRA describes as a qualifying misrepresentation. To be a qualifying misrepresentation the insurer has to show it either wouldn't have offered the policy at all or would have only offered it on different terms, 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 if it is deemed that the misrepresentation was a qualifying misrepresentation, then consideration has to be given as to whether the misrepresentation was deliberate, reckless or careless. This distinction is important, as the remedies available will depend on the type of misrepresentation.*

*Question and Misrepresentation*

*From the available evidence, 1st Central says Miss O failed to take reasonable care not to make a misrepresentation when she failed to disclose a modification to her vehicle when she took the policy out.*

*At this point, I think it would be helpful to provide some background information.*

*When Miss O originally took out her policy via C she hadn't taken physical possession of the vehicle. She says she was unaware of any modification to it. A copy of the sales advert for Miss O's vehicle has been provided. The advert describes that the vehicle had stage 2 ECU remapping.*

*When considering whether a consumer has taken reasonable care not to make a misrepresentation, we look to see if the insurer – in this case 1st Central - asked a clear question when the policy was taken out. And we look to see why, given the circumstances, the policyholder – in this case Miss O – answered the way they did. We then have to consider if a reasonable consumer would have answered the same way in those circumstances.*

*If the question was clear and we think a reasonable consumer would have answered it differently, with the correct information, we also check if the correct information would've affected whether a policy would be offered or if the policy terms would've been different. This is usually done by checking the underwriting criteria.*

*From the available evidence I can see that the question asked was: -*

*"Has the car been modified in any way?*

*Modifications are changes to the car's original specification. These can be mechanical or cosmetic changes inside or outside the car."*

*I've seen from the available evidence there were two response options available to Miss O, either yes or no. And guidance was also available to Miss O when answering the question which said, -*

*"How can I find out if my car has been modified*

*Check any documents you inherited when you purchased the car. You can also speak to the insurance provider if you're unsure"*

*Although Miss O's response to the questions hasn't been provided, I can see from the Statement of Fact, no modifications were disclosed by Miss O, as where modifications would*

*be listed it says "none".*

*Looking at the question asked, and the guidance provided, I think it's fair to say that the question asked was clear and as referenced above C gave guidance as to how Miss O could check whether the vehicle had been modified to help her answer it.*

*So, I've considered why Miss O answered no to it. I appreciate although Miss O hadn't taken possession of the vehicle at the time of answering C's questions, she says she was unaware of any modifications. But the sales advert identifies the vehicle had a stage 2 ECU remap and I therefore find Miss O would've had knowledge of the stage 2 ECU remap. Therefore, based on the question and guidance I think a reasonable person would've answered the question in a different way – i.e. they would have declared the stage 2 ECU remap as a modification having seen the sales advert and given the guidance provided by C as to how to check if the vehicle had been modified if unsure. I therefore think Miss O has failed to take reasonable care not to make a misrepresentation when answering this question.*

*I've therefore considered if the correct information would've affected the policy which would be offered or if the policy terms would've been different. This is done by checking the underwriting criteria.*

*1st Central has provided to this Service from its underwriters a list of acceptable modifications from its Product Guide. The list is exhaustive and anything which isn't contained on the list,1st Central deems to be unacceptable. I've considered the list and modifications such as the ECU remapping, isn't included. I'm therefore satisfied that had 1st Central known of the modification to Miss O's vehicle, cover wouldn't have been offered.*

*I'm therefore satisfied the misrepresentation made by Miss O was a qualifying misrepresentation. And I can see that 1st Central has treated it as a careless one by avoiding Miss O's policy, refusing her claim and returning her premium. These are actions CIDRA allows it to take where it wouldn't have offered cover had no qualifying misrepresentation been made. Because its treated Miss O's misrepresentation as careless that's the most beneficial outcome for Miss O, so I'm not going to interfere with that part of 1st Central's decision.*

*I'm aware 1st Central has also said two further modifications weren't disclosed by Miss O, and these were a rear spoiler and a full carbon eventuri induction kit. I've not gone on to make a finding on these because I don't need to. Even if I thought Miss O made no qualifying misrepresentation on either, or both of these two modifications, 1st Central would still be entitled to take the action it has, based on the misrepresentation of the ECU remapping as I've set out above.*

*Taking the above into account I don't find that 1st Central have been unfair or unreasonable because its shown Miss O made a qualifying misrepresentation under CIDRA and the actions it's taken are in line with what CIDRA allows it to do in such circumstances.*

*Therefore, I don't intend to ask 1st Central to do anything different. I appreciate this won't be the result Miss O was hoping for, as she has highlighted the extreme stress this matter has caused her. But I don't find that 1st Central have been unfair or unreasonable in reaching its decision."*

My provisional decision was therefore that I didn't uphold Miss O's complaint.

Both parties responded to my provisional decision. 1st Central has said it's happy to accept it.

Miss O responded expressing the impact this matter has had on her both mentally and financially. In summary she said:

- She thought whatever was stated in the advertisement was part of this being a high-performance sports car. She says she didn't think to research further, as she had found her dream car.

The complaint has therefore been passed back to me for a final 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 appreciate Miss O's strength of feeling regarding this matter and I'm sorry to hear how this matter has affected her. I've considered the points she's made however I see no reason to reach a different conclusion to the one reached in my provisional decision.

Miss O says she thought the details contained within the advert were part of the vehicle being a high performance sports car and she didn't carry out any research as she found her dream car. Whilst I've taken Miss O's comments into account, because the modification is specifically listed in the advert, I think a reasonable person would have known about it and answered yes, when asked if the car was modified. I therefore remain satisfied that Miss O answering no when asked regarding modifications was a failure to take reasonable care not to make a misrepresentation.

My opinion therefore remains unchanged that the misrepresentation made by Miss O was a qualifying misrepresentation under CIDRA and therefore the action taken by 1st Central was fair and reasonable, this being in line with what CIDRA allows it to do in such circumstances.

It's therefore on this basis I see no reason to amend my provisional decision as I don't find the steps taken by 1st Central to be unfair or unreasonable. I appreciate Miss O will be extremely disappointed, but I don't uphold her complaint.

**My final decision**

For the reasons I've set out above, I don't uphold Miss O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 29 October 2025.

Lorna Ball
**Ombudsman**