

## **complaint**

Mr and Mrs Q complain that Ageas Insurance Limited (successor to Groupama Insurance Company Limited) declined their claim under a motor insurance policy.

## **background**

Mr and Mrs Q had a four-wheel drive pick-up fitted with bull bars. Mrs Q insured it through a broker acting as agent for Groupama. Mr Q was a named driver. Someone stole the vehicle and Mr and Mrs Q did not get it back. Groupama said that the policy was void because Mrs Q had not disclosed that the vehicle had modifications.

## *our adjudicator's view*

The adjudicator recommended that the complaint should be upheld. He concluded that bull bars were a common feature on many of the model of Mr and Mrs Q's vehicle. The adjudicator was satisfied that Mr Q took reasonable care when answering the broker's question, as he honestly believed the bull bars were not modifications. The adjudicator recommended that Groupama should:

1. reconsider Mr Q's claim subject to the remaining terms and conditions of the policy;
2. remove the record of the voidance;
3. offer a pro-rata refund from the date of the voidance;
4. pay simple interest on the refund at 8% per annum from the date of voidance until the date of payment.

## *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr and Mrs Q and to Ageas on 21 March 2014. I summarise my findings:

the bull bars were a modification which someone else carried out before Mr and Mrs Q got the vehicle in about 2009.

I was not satisfied that Mr and Mrs Q had given a correct answer to the questions about modifications.

I was satisfied that they took reasonable care in the answer and made a mistake.

Groupama would have declined to insure the vehicle if it had known about the bull bars.

through the actions of its agent, Groupama treated the policy as still in force and waived its right to treat it as void.

Subject to any further representations by Mr and Mrs Q or Ageas, my provisional decision was to order Ageas to:

1. pay Mrs Q's claim for the pre-accident value of the vehicle less any policy excess;
2. pay Mrs Q simple interest on that claim at an annual rate of 8% from 7 March 2012 to the date it pays her. If it considers it has to deduct tax from the interest element of my award, it shall send Mrs Q a tax deduction certificate when it pays her. She can then use that certificate to try to reclaim the tax, if she is entitled to do so;
3. write a letter to Mrs Q saying that it avoided her policy in error;

4. remove the voidance from its records and external databases.

Mr and Mrs Q say they have nothing to add.

Ageas disagrees with my provisional decision. It questions the relevance of actions by the broker.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I have seen Groupama's agent's standard proposal form. It asks a number of questions including two towards the bottom of the first page:

*"Has the car been changed in any way from the vehicle manufacturer's standard specification including external bodywork changes? If YES please give details:  
Is the car a grey import i.e. not manufactured for the UK market?"*

Mr Q completed the form online. From the later call recording, I note that the agent asked Mr Q:

*"no modifications to the vehicle and it has not been imported?"*

I consider that these were reasonably clear questions. Mr Q answered in the negative.

Groupama has not provided a specification from the Japanese manufacturer which made the car some time previous to its first registration in about 1997. I accept that – at around that time – other vehicles of its type had bull bars.

Groupama says that – when discussing the value of the vehicle – Mr Q told it that he had spent about £1,000 on it. From the call recording I accept that he spent the money not on the bull bars but on other items including a re-spray.

I find on balance that the bull bars were a modification which someone else carried out before Mr and Mrs Q got the vehicle in about 2009. It follows that I am not satisfied that Mr and Mrs Q had given a correct answer to the questions about modifications. But I am satisfied that they took reasonable care in the answer and made a mistake.

From its underwriting guidelines, I accept that Groupama would have declined to insure the vehicle if it had known about the bull bars.

Mr Q says that – about a month after the theft – he bought a replacement vehicle. He says he made a telephone call to put it on his policy with Groupama. He says that he paid an additional premium of about £100 on his debit card.

Groupama has said that the telephone call was to its agent. And Groupama says that this was about two weeks after it told the agent:

*“that there were potential issues with the validity of the policy and that they must not process any adjustments/amendments under the policy...”*

I am satisfied that its agent did add the new vehicle to the policy after Groupama became aware that Mrs Q had not disclosed the modifications to the old vehicle. I do not consider that Mrs Q ought reasonably to have known that the agent was acting outside its instructions. I conclude that – through the actions of its agent – Groupama treated the policy as still in force and waived its right to treat it as void.

Therefore, I am not satisfied that it treated Mrs Q fairly and reasonably by later writing to her saying that the policy was void. The letter said that it had refunded the full annual premium to the agent. So I do not consider it appropriate to order Groupama to make a pro-rata refund to Mrs Q.

I consider it fair and reasonable to order Groupama to pay Mrs Q’s claim with interest from the date it said it was avoiding the policy.

It should also write a letter (which Mr and Mrs Q may show to other insurers) saying that it avoided the policy in error. And it should remove all records of the avoidance of the policy.

### **my final decision**

For the reasons I have explained, my final decision is that I am minded to uphold this complaint. I order Ageas Insurance Limited (successor to Groupama Insurance Company Limited) to:

1. pay Mrs Q’s claim for the pre-accident value of the vehicle less any policy excess;
2. pay Mrs Q simple interest on that claim at an annual rate of 8% from 7 March 2012 to the date it pays her. If it considers it has to deduct tax from the interest element of my award, it shall send Mrs Q a tax deduction certificate when it pays her. She can then use that certificate to try to reclaim the tax, if she is entitled to do so;
3. write a letter to Mrs Q saying that it avoided her policy in error;
4. remove the voidance from its records and external databases.

Christopher Gilbert  
**ombudsman**