

The complaint

Mr K complains that AXA Insurance UK Plc trading as Moja (AXA) unfairly avoided his motor insurance policy (treated it like it never existed) and refused to pay his claim.

What happened

Mr K took out a motor insurance policy with AXA through an on-line price comparison site.

When Mr K's car was stolen in July 2023 AXA said he'd answered the question it asked about motoring convictions incorrectly. And it considered this to be a careless qualifying misrepresentation, which entitled it to avoid his policy and decline his claim because of this.

AXA returned the policy premiums to Mr K.

Mr K brought his complaint to us, and our investigator thought it should not be upheld. They agreed there had been a qualifying misrepresentation and they believed it was careless. They said they thought AXA were entitled to avoid Mr K's policy and decline his claim and return the premiums he'd paid to him.

Mr K doesn't agree with the investigator and has asked for an ombudsman's decision. He said although he could have made an error when making his on-line application for the motor insurance policy, he is the victim of the theft of his car. He said his claim was rejected for speeding points which has no influence over a stolen car.

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.

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.

AXA thinks Mr K failed to take reasonable care not to make a misrepresentation when he didn't disclose two speeding convictions in his application for a motor insurance policy.

I've looked at the questions asked, and it was clear that speeding convictions needed to be disclosed as it asked for details of driving offences and bans.

Mr K confirmed he used several comparison websites to obtain motor insurance quotes in which he did disclose his speeding convictions. He accepted that with this quote he had made an error which may have been a typing or human error.

I therefore do not think he took reasonable care.

AXA said if Mr K had declared the speeding convictions on the comparison site, it would not have appeared as a quotation for Mr K. It provided evidence by way of running the quote again with the two speeding convictions and this confirmed it declined to offer cover.

I considered Mr K's comments in which he says AXA do insure individuals with two speeding quotes. However, it confirmed that although it would consider cover in some instances for an individual with two speeding convictions it would not offer cover if they were both in the past two years. And in Mr K's case both his convictions were within the past two years.

I looked at the policy documentation issued to Mr K at the start of the policy term. I saw there was a clear summary of facts that stated he had no driving convictions in the last five years. Mr K was instructed to check all the documentation and get in touch with AXA if anything needed updating. This confirms he had opportunities to notice there were no driving convictions declared and he could have contacted AXA to inform it of them.

This means I'm satisfied Mr K's misrepresentation was a qualifying one.

AXA said Mr K's misrepresentation was careless. It did not feel that Mr K had deliberately misled it about his driver history, it understood this was a human error.

I agree that Mr K's misrepresentation was careless. He did not deliberately avoid disclosing his speeding conviction. He confirmed he could have made an error.

As I'm satisfied Mr K's misrepresentation should be treated as careless I've looked at the actions AXA can take in accordance with CIDRA.

Given the correct information about Mr K's speeding convictions AXA would not have offered cover. This means it can avoid the policy from the start and return any premiums paid.

I do understand that this will be a disappointing outcome for Mr K, however I'm satisfied AXA was entitled to avoid his policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, AXA does not have to deal with his claim following the theft of his car.

As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing AXA to rely on it to avoid Mr K's policy produces the fair and reasonable outcome in this complaint.

My final decision

For the reasons set out above, I've decided not to uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 April 2024.

Sally-Ann Harding
Ombudsman