

The complaint

Mr T complains AA Underwriting Insurance Company Limited (“AAUICL”) unfairly avoided his motor insurance policy following a claim.

Any reference to AAUICL includes its agents.

What happened

Mr T took out a motor insurance policy with AAUICL around August 2022 to cover his car. In July 2023, he made a claim on the policy for damage to his car caused during an attempted theft.

Towards the end of August 2023, AAUICL wrote to Mr T to say his policy had been voided as he hadn’t disclosed modifications he’d made to his car, including spoilers, a sign and a coloured strip on the door panels. It said under the terms of the policy, he needed to disclose any modifications including changes to the appearance of the car and the bodywork and it thought this was made clear in the schedule and on the website he took the policy out through. So, it considered he’d had made a misrepresentation under The Consumer Insurance (Representations and Disclosures) Act 2012 (“CIDRA”). AAUICL said it wouldn’t have covered Mr T if it had known about the modifications.

AAUICL accepted Mr T hadn’t intended to deceive it but had made the misrepresentation carelessly. So it avoided the policy from the date the modifications were made – December 2022. It says it refunded all of the unused premiums, waived any cancellation fees and declined the claim.

Unhappy with AAUICL’s decision to avoid his policy, Mr T made a complaint to our service. He said the modifications didn’t impact the car or cause the incident, so he didn’t understand AAUICL’s decision which, he’s said, has caused him severe distress and upset.

Our Investigator upheld Mr T’s complaint. In summary, he didn’t think AAUICL had acted in line with CIDRA by avoiding the policy. Instead, he thought it should’ve been treated as cancelled in December 2022. But after Mr T said he would’ve cancelled his policy himself if he was aware there was a problem, our Investigator said AAUICL should treat the policy as cancelled by Mr T from December 2022. He also thought AAUICL should continue to waive any cancellation fees that would’ve applied, this was to compensate Mr T for some of the distress and inconvenience AAUICL had caused.

Mr T accepted our Investigator’s assessment but AAUICL didn’t and asked for a Final Decision by an Ombudsman. So the complaint’s been passed 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.

The key issue in dispute in this case is whether AAUICL fairly avoided Mr T's policy from the date of the modifications.

The law which AAUICL has relied on is CIDRA. This requires consumers to take reasonable care not to make a misrepresentation when taking out a policy. The standard of care is that of a reasonable consumer. But I don't think it's been correctly applied in this case.

CIDRA applies when customers take out, renew or vary their policies. Both parties accept Mr T's car wasn't modified at the point he took out the policy – and he didn't vary the policy by contacting AAUICL to let it know about any changes he'd made. So I'm satisfied he couldn't have made a qualifying misrepresentation according to CIDRA in this case. It seems from AAUICL's more recent correspondence with our service that it accepts this. Instead, I've considered whether Mr T should've notified AAUICL in December 2022 of the modifications he'd made and planned to make and whether they amounted to a fundamental change in risk.

I've read the terms and conditions set out in the policy document and schedule carefully. In summary, these say Mr T needed to keep his policy up to date and advise AAUICL of any modifications to his car during the policy period. The schedule gives examples of modifications, including alloy wheels and spoilers. And it confirms that no modifications had been declared by Mr T when he took out the policy. While the terms say Mr T needs to update AAUICL of any changes, our approach is that it's only fair and reasonable for a consumer to do this if there is a fundamental change in circumstances.

I'm satisfied that modifications were made to Mr T's car within the policy year, which were a fundamental change in risk and that he didn't tell AAUICL about them – which wasn't in line with the policy terms. I say this as I'm satisfied the number of modifications Mr T's made to his car during the policy period amount to a fundamental change in risk and Mr T should've notified AAUICL of the modifications he made to his car.

AAUICL accepts Mr T didn't tell it about the modifications to his car due to a careless mistake. So I've thought carefully about what AAUICL says would've happened if Mr T had made it aware of the modifications. AAUICL has given us a copy of its underwriting criteria to show it wouldn't have offered cover for the car and so the policy would've needed to have been cancelled. Mr T's told our service he would've either reversed the modifications or chosen to cancel his policy himself if he'd know this at the time. So, if Mr T had notified AAUICL of the modifications he'd made – or intended to make – to his car, I think it's more likely it would've informed him he could no longer continue with the cover, and he would've therefore chosen to cancel the policy himself and look for cover elsewhere.

Overall I don't think AAUICL has acted fairly in avoiding or cancelling Mr T's policy from the date he made the modifications – and instead, I think it should update its records to show Mr T cancelled his policy himself in December 2022 when the first modifications were made.

AAUICL has highlighted that when it avoided Mr T's policy, it didn't charge the cancellation fees that would now apply if it treats the policy as cancelled by Mr T. But considering the incorrect information AAUICL has given Mr T and the impact this has had on him, I don't think it would be fair for it to now charge the fees it previously waived. Particularly as Mr T's insurance premiums elsewhere are likely to have been affected and he'll be inconvenienced further in trying to put that right.

Putting things right

To put things right in this case, AAUICL should remove all records of the avoidance and cancellation of Mr T's policy by AAUICL from internal and external databases. Instead, all databases should be updated to show the policy was cancelled by Mr T. And it should continue to waive any cancellation or administration fees which would normally apply when a customer cancels their policy.

My final decision

For the reasons I've given, I uphold Mr T's complaint and direct AA Underwriting Insurance Company Limited to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 9 April 2024.

Nadya Neve
Ombudsman