

## **The complaint**

Mrs K has complained that First Central Underwriting Limited unfairly cancelled her motor policy as if it never existed and refused to deal with her claim because she didn't disclose her new car was modified.

Mrs K is represented by her husband who also represented her in obtaining this policy for her car, so I shall now just refer to Mr K for ease of reference.

## **What happened**

Mr K bought this car in August 2023 and sadly it was involved in an accident in September 2023. So, he made a claim to First Central. In validating the claim, First Central found that the car was modified which he didn't disclose when insuring the car.

It said that the modifications on the car weren't acceptable for it to provide insurance for this car. So, it decided that he carelessly non-disclosed the fact it was modified which entitled it to refuse to deal with the claim and cancel the policy as if it never existed. It also returned the premium amount paid for this car.

Mr K said he had no idea it was modified when he bought it second hand from a private seller. So, he felt it was unreasonable and unfair for First Central to refuse to deal with the claim and cancel the policy. As First Central wouldn't change its stance, he brought the complaint to us.

The investigator didn't think First Central had done anything wrong. Mr K disagreed so the complaint has 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.

Having done so, I'm not upholding this complaint. I'll now explain why.

I do appreciate and understand that Mr K will be deeply disappointed with my decision, however the law on this matter is clear that First Central was entitled to do what it did.

The relevant law is the Consumer Insurance (Disclosures and Representations) Act 2012 (CIDRA). This Act puts a duty on consumers like Mr K to answer all the questions asked by the insurer, First Central here, honestly and carefully. It also puts a duty on insurers to ask clear questions. If it transpires a clear question wasn't answered properly, then it's deemed a qualifying misrepresentation under the Act. Then First Central is permitted certain remedies.

If it can show it would have never offered insurance for the car had Mr K answered the questions asked correctly, then it's allowed to cancel the policy as if it never existed, as in

'void' the policy. It's also entitled to consider whether the misrepresentation he made was made carelessly or deliberately and recklessly. If it was merely careless then it must return the premiums made or if it was reckless, then it's entitled to retain the premium paid.

When Mr K initially phoned up to add this car to the policy given the old car was written off due to an accident, First Central clearly asked the question about modifications, and I consider that question was clear. Mr K said he wasn't aware of any. At this stage Mr K was only enquiring about how much it might cost in any increase in premium, so he didn't ask for the car to be insured that day.

It was a little time later when Mr K phoned up again. And again, he was asked about modifications, and he said that as far as he knew the car was standard, there's nothing else he really knew on it. It's not something that he had checked all over.

I consider First central did ask clear questions about modifications. And it did this more than once which I consider key here and I'll further deal with that below. Also, its website provided more detail about modifications too.

Sadly, when assessing the car following the accident, it was clear the car had several modifications beyond that fitted by the factory including, tinted rear lights, rear spoiler, rear quarter vents, front splitter, non-standard alloy wheels and an induction system. First Central has shown us from its underwriting guide that if it had known about these modifications from the start, it wouldn't have accepted this car on to the policy.

The regulations permit insurers to decide what risks they wish to accept and what risks they don't want to accept. It's part of their commercial discretion and obviously it's also commercially sensitive so I'm not permitted to detail it fully as we publish our decisions. Because First Central's underwriting guide details the risks to include varying modifications it doesn't want to accept, this means it would also treat anyone else in Mr K's position the same. So, he hasn't been singled out and treated unfairly.

This is because effectively on the phone First Central asked Mr K about modifications at least twice. I consider that put him on notice to make enquiries from the seller about any modifications. But it doesn't appear Mr K thought about doing this. He did make mention to the investigator that he thought the seller said there wasn't any, but when he went back through any correspondence with the seller that isn't evident.

The issue is that CIDRA puts the duty on the consumer as in Mr K here, to check the information for the questions asked by the insurer. The facts of this case show that it was clear First Central did want to know if this car was modified. And given he had two phone calls with First Central where the issue of modifications was raised, I consider that gave Mr K coherent notice to ask the seller about the modifications. It's evident to me from all the evidence that Mr K simply didn't do this. He was rightly concerned about any finance on the car, but he didn't appear to ask about the modifications despite First Central asking him about them.

Consequently, I consider that First Central properly asked about modifications, but Mr K missed asking the seller about them. So, in that case, First Central is fully entitled to rely on the provisions of CIDRA and cancel the policy as if it never existed and refuse to deal with the claim. That's because CIDRA permits First Central to do this in these circumstances. So, it's not reasonable for me to ask it to ignore both its own decisions as to what risks it wants to accept and the clear unequivocal provisions of CIDRA which it's entitled to rely on. CIDRA provides that in circumstances like this, the law permits First Central to cancel the policy as it has done. I also agree with First Central that it's clear Mr K didn't intend to provide the

incorrect information, he was merely careless, so it's right the premium paid for this car was returned to him.

Therefore, I don't consider First Central has done anything wrong here.

### **My final decision**

So, for these reasons, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 16 May 2024.

Rona Doyle  
**Ombudsman**