

The complaint

Mr H complains that Highway Insurance Company Limited declined his claim and avoided his motor insurance policy.

What happened

Mr H bought a new campervan from a campervan conversion company, who had converted the van into a campervan before Mr H purchased it. Unfortunately, Mr H's campervan was then damaged while going into a car park, so he claimed on his policy with Highway.

After reviewing the claim, Highway avoided Mr H's policy and declined the claim, it also cancelled Mr H's following policy as his insurance had renewed just after the claim. Highway said Mr H hadn't disclosed that his campervan had a vinyl wrap to the lower half of it. It said if Mr H had disclosed the wrap, then it wouldn't have provided him with cover. Mr H wasn't happy with Highway's decision to decline his claim and avoid and cancel his policies, so he complained. He said he'd bought the campervan new, and the wrap was on it when he purchased the campervan.

Highway reviewed Mr H's complaint and didn't uphold it. It said, while Mr H had declared that his campervan had been converted, when asked if it had any other modifications, he'd said it didn't. Because of this Highway thought Mr H had failed to take reasonable care not to make a misrepresentation when taking out the policy. Highway said if it had known about the wrap then it wouldn't have covered him and so stood by its position to avoid the policy. Mr H didn't agree with Highway's response and referred his complaint here.

Our Investigator reviewed the complaint and found that during the sale of the policy Mr H had let Highway know the van had been converted into a campervan. She also found that the wrap had been applied to the campervan during the campervan conversion. Because of this she didn't think Mr H had failed to take reasonable care not to make a misrepresentation when taking out the policy. And so didn't agree Highway had acted fairly by avoiding Mr H's policy and declining the claim. Our Investigator recommended Highway to remove any record of the avoidance from internal and external databases, reinstate Mr H's policy, assess the claim in line with the remaining policy terms and conditions and pay Mr H £300 compensation for distress and inconvenience.

Highway didn't agree and asked for an Ombudsman's decision. It said Mr H had provided it with a specification sheet for the van and under the section "None (manufacturer name) Optional Extra's" it listed the wrap to Mr H's campervan. And this means he should have known it was an additional modification he should tell it about. Highway also said it didn't agree that the application of the wrap was something that is included in the conversion to a campervan or something which regularly happens.

Our Investigator didn't agree with Highway. She said that the specification list Highway provided showed multiple other changes to Mr H's campervan which weren't part of the manufacturer's options list, but were part of the conversion to Mr H's campervan. She also explained that Mr H bought the campervan already converted and the wrap was completed as part of that process. Because of this our Investigator thought that the reasonable person

wouldn't be aware of the specific details about what is included in a campervan conversion and as such Mr H took reasonable care when taking out the policy. Highway didn't agree.

As Highway didn't agree the complaint has come 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 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.

Highway thinks Mr H failed to take reasonable care not to make a misrepresentation when he took out his policy over the phone. Highway said that it asked Mr H if his campervan had other modifications apart from the conversion and he said it hadn't. However, when Mr H claimed for damage to his campervan Highway discovered a vinyl wrap had been applied to the lower half of the campervan and so believes Mr H failed to take reasonable care not to make a misrepresentation when taking out his policy.

Highway hasn't provided a copy of the sales call with Mr H but has provided a transcript of the question he was asked which says: "Has the vehicle been imported or modified?" Highway says Mr H said: "It's been converted". Highway has explained he was then asked: "Apart from the conversion any modifications?" to which Highway has said Mr H replied: "Nope".

Mr H hasn't disputed what Highway has said about the call; however, he has said he didn't think the campervan had been modified apart from the conversion. The reason for this is Mr H said he bought the campervan already converted and it had the wrap on it when he bought it. Mr H has also provided the sales invoice for the campervan which list the adaptations made to it and within this list it says: "Vinyl Wrap Half Body". I've also noted within the list of alterations made during the conversion it lists things like alloy wheels and a bike rack. The invoice also shows Mr H was the first owner and keeper of this campervan as it has the campervan being noted as "New" and Mr H has been charged a first registration fee.

Highway has said it doesn't think Mr H took reasonable care not to make a misrepresentation as it doesn't agree that vinyl wraps are part of converting a van into a campervan. Highway has also provided a link to the government website about what it would expect to see in a conversion. I've considered Highway's response, but I'm not persuaded that it means Mr H didn't take reasonable care not to make a misrepresentation when taking out the policy. I say this because Mr H bought the campervan new after it had been converted and the vinyl wrap was part of this conversion. And when considering what he was asked, Mr H confirmed the van had been converted into a campervan and there weren't any other modifications.

Given the wrap was done as part of the conversion and the conversion also included other items which were included in the None (manufacturer name) Optional Extra's I'm not persuaded Mr H failed to take reasonable care not to make a misrepresentation when answering the questions in the way he did. It follows that I'm not persuaded that Highway has acted fairly by avoiding Mr H's policy and declining his claim.

I've therefore looked at what Highway needs to do to put things right. As Highway avoided Mr H's policy and declined his claim, it needs to re-instate his policy and settle the claim in line with the remaining terms and conditions. Highway also needs to remove the record of the avoidance from any internal and external databases and provide a letter to Mr H to confirm it avoided his policy in error. Also, as Highway then cancelled Mr H's following policy due to the wrap, it follows that policy cancellation isn't fair either. I say this as even though Highway decided it didn't want to cover Mr H's campervan due to the wrap, it should have given him the option to cancel it first. I can see Mr H asked for this and Highway declined to allow it. So, Highway also needs to remove any record of this cancellation from any internal and external databases too. Mr H has confirmed he received a refund from the cancelled policy and so I'm not persuaded Highway needs to do anymore than removing the records of cancellation and providing Mr H a letter to confirm this was cancelled in error. However, if Mr H is unhappy with the refund, he received following the second policy being cancelled he would need to raise that as a new complaint as I haven't considered it here.

Mr H has also had the unnecessary distress and inconvenience of his policy being avoided and will have to explain to his new insurer this was done in error and ask it to re-calculate his premium without the avoidance. To compensate Mr H for the unnecessary distress and inconvenience Highway has caused by unfairly avoiding his policy and declining the claim it should also pay Mr H £300.

My final decision

For the reasons explained above I uphold this complaint. I require Highway Insurance Company Limited to:

1. Reinstate Mr H's policy and settle the claim in line with the remaining policy terms.
2. Remove the avoidance and cancellation of Mr H's policies from any internal and external databases and provide Mr H with a letter to confirm his policies were avoided and cancelled in error.
3. Pay Mr H £300 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 October 2024.

Alex Newman
Ombudsman