

The complaint

Miss B has complained that First Central Underwriting Limited avoided (treated it as if it never existed) her motor insurance policy and refused to pay her claim.

What happened

Miss B took out a motor insurance policy with First Central through an online price comparison site. When her car was damaged in an accident, she tried to claim on her policy. First Central declined her claim, avoided her policy but refunded the premiums she'd already paid.

When Miss B complained, it said she'd answered the question she'd been asked about whether car had any modifications incorrectly as the car had a body wrap, a rear spoiler and tinted rear lights added after it was made. And that it considered this to be a careless qualifying misrepresentation, which entitled it to avoid her policy and refuse her claim. But Miss B said she wasn't aware that her car had any modifications as she'd bought it from a main dealer's garage.

Miss B brought her complaint to us, and our Investigator thought it should be upheld. He didn't agree there had been a qualifying misrepresentation. He thought Miss B wasn't aware that the car had any modifications as these weren't mentioned in the advert before she bought it. He thought Miss B could rely on the checks on the car carried out by the garage.

The car's current colour was stated on the V5 registration document. He wasn't persuaded by First Central's thought that the car's differently coloured roof should have alerted Miss B. And he thought other cars also had spoilers and Miss B wouldn't know this had been added. He said First Central should reinstate the policy, consider Miss B's claim and pay her any losses and also pay her £200 compensation for the trouble and upset caused.

First Central doesn't agree with the Investigator and has asked for an Ombudsman's decision. It said the car had modifications which were unacceptable, and it thought this was careless misrepresentation. It thought the modifications increased the risk. And it thought Miss B should have checked the car's history to see if it had been modified. It thought Miss B knew what a wrap was.

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.

I can understand that Miss B feels frustrated by First Central's decision. She said she can't afford a new car and the loss of her car is affecting her ability to work. I was sorry to hear this.

First Central said Miss B had made a careless misrepresentation. So the relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it is entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

First Central thinks Miss B failed to take reasonable care not to make a misrepresentation when she stated in her application via a comparison site that the car didn't have any after-market modifications. And I've looked at the question she was asked when she completed the application and I think this was a clear question asked by First Central through the comparison site Miss B used.

Miss B was asked if the car had any modifications. A help pop-up box explained:

"What does this mean?"

If you or a previous owner has made a change from the manufacturer original specification, such as alloy wheels, air conditioning, bodywork, exhaust system, suspension or tinted windows, add it here.

If you're unsure if your car's been modified, check its previous history to find out."

Miss B answered "No". But after the accident First Central found that the car had a full body wrap apart from the roof, a spoiler on the boot, and tinted rear lights. So I've looked to see whether Miss B should have reasonably been aware of these modifications and whether she took reasonable care in answering the question.

Miss B explained that she'd bought the car from a main dealer and didn't know it had any modifications. She said these weren't stated in the car's advert. As she was buying the car from a main dealer, Miss B said she didn't carry out the checks on the car's history that we would recommend for a second-hand car. If she had, then she would have found that the car's colour had been changed. But I think she could reasonably rely on the main dealer's own checks, and she had no reason to think that the car had been modified. This was confirmed by the car's V5 logbook which stated the car's current colour.

First Central said the car looked different as it was in two colours, and this should have alerted Miss B. But, as our Investigator has found, two colours aren't unusual for the make and model of Miss B's car.

First Central said the spoiler added to the boot would have enhanced the car's performance and increased its risk. But, as our Investigator has found, many cars similar to Miss B's also had spoilers. So I'm satisfied that a reasonable person wouldn't have known that the spoiler was a modification.

First Central also said the car's rear lights were tinted. But I don't think a reasonable person would have noticed this or suspected that they had been modified.

First Central said Miss B had personalised number plates, showing that she was into cars and should have been aware of the modifications. But I'm not persuaded by this as many people have personalised plates and this isn't necessarily linked to a great interest in cars.

First Central also said Miss B knew the car had a wrap as she had confirmed this in a call after her claim. I've listened to the calls. Miss B said she knew the car was "wrapped orange" as this was the colour stated on the V5. Miss B said she had bought the car because of the colour. But I'm not satisfied that Miss B understood that a wrap meant the car had been modified. I think she thought this meant the car's colour.

First Central said the car had modifications which were unacceptable, and so it thought this was careless misrepresentation. But this would only apply if the consumer hadn't taken reasonable care not to make a misrepresentation.

And I think Miss B answered the question about modifications to the best of her ability. And I think this means Miss B took reasonable care not to make a misrepresentation when she said the car didn't have any modifications. And so I think it was unfair and unreasonable for First Central to avoid her policy and decline her claim. And I think it should now reinstate Miss B's policy and deal with her claim under the remaining terms of her policy.

From what I can see, Miss B's car was deemed to be a total loss. And so First Central should pay her a settlement for its total loss. Miss B has been without her money for some time, and so I think First Central should reasonably add interest to this amount.

If Miss B's car is deemed to be repairable, and if Miss B is entitled to a courtesy car under her policy, then I think First Central should cover any reasonable expenses Miss B incurred whilst she was without her car. And Miss B has been caused trouble, upset and stress by the unfair avoidance. So I think First Central should pay her £200 compensation as this is in keeping with our published guidance for the impact caused.

Putting things right

I require First Central Underwriting Limited to do the following:

1. Reinstate Miss B's policy and deal with her claim under the remaining terms of her policy.
2. If First Central pays Miss B a settlement for the total loss of her car, then interest should be added to this amount at the rate of 8% simple per annum from the date of the avoidance to the date of settlement†.
3. If the car is repairable and Miss B would have been entitled to a courtesy car, then First Central should cover any reasonable expenses she incurred whilst without her car.
4. Pay Miss B £200 compensation for the distress and inconvenience caused by the unfair avoidance of her policy and rejection of her claim.

†If First Central considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss B how much it's taken off. It should also give Miss B a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons set out above, my final decision is that I uphold complaint. I require First Central Underwriting Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 12 December 2024.

Phillip Berechree
Ombudsman