

## **The complaint**

Mr H complains that AWP P&C SA unfairly reduced a claim settlement under his bicycle insurance policy due to underinsurance. It subsequently declined the claim and cancelled the policy, retaining the premiums, based on allegations of fraud.

Where I refer to AWP, this includes the actions of its agents and claims handlers for which it takes responsibility.

## **What happened**

In 2022, Mr H was taking part in a race abroad when his bike was damaged. He made a claim on his bicycle insurance policy underwritten by AWP.

AWP said Mr H had underinsured his bike because he'd declared the bike's value as £3,000 when he took out the policy, but he'd actually brought it for £3,299. It also became aware that Mr H had a set of power meter pedals which he hadn't declared on his policy. Because of this, AWP said it would settle the claim using the average clause set out in the policy terms.

Whilst Mr H accepts that he got the purchase price of his bike wrong, he says this was an accident. He also says the power meter pedals weren't used during the race, he'd put the original set back on, and he's not claiming for the pedals in any event. So he didn't think his claim settlement should be impacted.

AWP found the official photographer's photos of the race online and had them reviewed by a third-party expert. Based on this, it said the power meter pedals were on Mr H's bike during the race. As it believed Mr H had been fraudulent in his answers to the enquiries about his pedals in order to personally gain something he wasn't entitled to, it declined the claim and cancelled the policy on the basis of fraud, retaining the policy premiums paid.

Mr H raised a complaint which he brought to our service. And our Investigator upheld it as she wasn't satisfied AWP had proven, on the balance of probabilities, that Mr H had acted fraudulently. She recommended that AWP settle the claim with interest and pay compensation.

Mr H agreed but AWP didn't, so the complaint was passed to me to decide. And I issued the following provisional decision.

## **Provisional decision**

### *Underinsurance*

Mr H took his insurance policy out online for a period of ten days. AWP has provided us with screenshots of the online sales process, and I've also viewed this myself on the website that Mr H would've used.

I can see that when obtaining an insurance quote, Mr H would've been asked to add the details of his bike in a grey box. Immediately above this, in bold, it says *"you must include power meters & upgrades in the value of your bike"*.

One of the questions asked in the grey box is whether the bike has been purchased new, second hand, or hired. When *"purchased new"* is selected, a pop-up box appears which sets out the following bullet points:

- *You must value the bike at the price paid for it.*
- *You cannot choose the price based on what you think it's worth today.*
- *You must include power meters and upgrades in the value of your bike: e.g. pedals and saddles.*
- *You must have proof of purchase for this bike e.g. paper or electronic receipt*

To move forward with the quote, you must click on a button under the bullet points which says, *"I understand"*. The website doesn't allow you to click anywhere else on the screen, as the website is greyed out behind the pop-up box.

The last question asks for the bike's value, and then you must add the bike to the quote.

After this, it asks for the total price of all accessories to be insured. Below the question, it says *"power meters must be included in the bike value"*.

I'm satisfied the question asked is clear. It's set out several times that power meter pedals must be included in the value. And that the value is the purchase price of the bike, not what Mr H may consider it to be worth. The obligation was on Mr H to provide accurate answers to these questions.

Mr H entered £3,000 as the bike value, but he'd purchased it for £3,299. Whilst this may have been an unintentional mistake, AWP has used this information to determine whether to offer a policy, on what terms, and at what premium based on the level of risk Mr H's bike represents.

Furthermore, the power meter pedals weren't included in the bike's value. And as it's clear Mr H took these pedals abroad with him and they were on the bike at times during the ten days of insurance cover – although exactly when is disputed – these should've been added to the value. Whilst Mr H may not have wanted to insure them, the website was clear they weren't additional accessories that he could choose whether or not to insure, but rather they're considered to be part of the bike's value and needed to be included within it.

Mr H had an opportunity to notice and rectify his mistake when he received his policy documents. The covering letter asks Mr H in bold capital letters to read all information and check it's correct. And on the next page, the statement of fact shows the bike's value at £3,000.

As the information given was incorrect, Mr H has misrepresented his risk. AWP addressed this by applying the policy terms for underinsurance, which says:

*"Underinsurance*

*If the sum insured isn't enough to cover the pedal cycle value, we will reduce any payment in line with the reduction in insured value.*

### *Accidental damage example*

*You buy your pedal cycle for £2,000 but insure it for £1,000. It suffers £500 worth of damage in an accident. We would only pay £250 towards the cost, in line with your underinsurance of 50%."*

AWP are entitled to apply the policy terms. But our service would look at misrepresentation under the relevant law, which is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) – which I consider to be a more appropriate approach here. 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.

If a consumer fails to do this, the insurer has certain remedies it can take provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation, the insurer has to show that, had it been provided with the correct and accurate information and no misrepresentation had been made, it would have offered the policy on different terms or not at all.

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, reckless, or careless.

In this case, if AWP were able to show that it would've done something differently when given the correct value of Mr H's bike, this would be considered as a qualifying misrepresentation. So for example, it may have charged a higher premium on the basis that a higher value bike with power meter pedals might be at higher risk of theft and any claim for loss or damage would be more expensive. In those circumstances, we'd consider whether Mr H had deliberately or recklessly misrepresented the value of his bike or if it was just a careless mistake.

In either scenario, Mr H wouldn't have had his claim paid in full, if at all. If it was paid, it would've been settled proportionately based on the difference between the premiums he paid and should've paid.

In any event, the policy went on to be cancelled – which I'll address below.

### *Fraud*

Part of the reason Mr H felt AWP's claim decision was unfair was because the power meter pedals weren't fitted to his bike at the time of the incident, and he wasn't claiming for them.

This prompted AWP to do further investigations. It reviewed the post-accident photos submitted by Mr H showing the damage to his bike. In one particular photo showing the broken chain, the pedal is in shot and the brand name is shown clearly as being the power meter pedal. AWP asked Mr H on a call whether he'd switched the pedals post-accident, to which he answered, *"of course not"*.

Further photos were reviewed from the race including ones taken by the race's official photographer. These were sent to a third-party bike specialist who said, *"based on the photos, which aren't great unfortunately, we would say it would be the [power meter pedals]"*.

AWP asked Mr H why the power meter pedals were in the photos, and he initially didn't provide an answer. When questioned again, he said he'd used the power meter pedals both pre and post-race in the vicinity of where the race took place and he'd been photographed

doing so. He felt AWP had made assumptions of when the photos were taken but AWP say the professional's photographs were time and date stamped and that they were taken during the race.

Based on its investigations, AWP considered Mr H had acted fraudulently during his claim. It referred to the policy terms which says, *"If you or anyone acting on your behalf gives us false or inaccurate information and we suspect fraud, all benefits under this policy will be void. The matter will be recorded with the above Agencies and pursued in accordance with the law"*.

I've considered whether AWP has acted fairly and reasonably when concluding that Mr H has been fraudulent in his claim, based on the evidence available.

I've reviewed the photos alongside stock photos of the two relevant pedals. There are clear distinctions between the two – the power meter pedal is more curved and has a silver axle and internal metal ring whereas the original pedals are black plastic. And it's these distinctions that can be seen in the photos, with the silver parts of the pedal evident. In addition, the head unit can be seen on the handlebars in the photos, which connects to the power meter pedals.

I can see that AWP queried the pedals being used on five occasions with Mr H and his version of events hasn't always been forthcoming or consistent. This would understandably give AWP cause for concern, and I have no clear testimony from Mr H about why the power meter pedals are showing in the photos when he insists they weren't on the bike at the time of the incident. It's also not clear why he would opt not to use these in a race when they're designed to help with performance, but that he would choose to use them before and afterwards.

Based on the information available, I can understand why AWP has reached its conclusion that Mr H hasn't been truthful in his claim. I don't think it's an unreasonable concern given the photo evidence and the lack of a consistent testimony from Mr H. It has acted in line with the policy terms by cancelling the policy. And it has acted in line with the relevant law – the Insurance Act 2015 (s.12) – when retaining the policy premiums.

Neither Mr H nor AWP responded to my provisional decision.

### **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.

As neither party had any further submissions for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

### **My final decision**

For the reasons I've explained, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 October 2023.

Sheryl Sibley  
**Ombudsman**