

## **The complaint**

Mr K complains that Liverpool Victoria Insurance Company Limited (LV) avoided his car insurance policy (treated it like it never existed) and refused to pay his claim.

Mr K is being represented by a relative, Mr G in his complaint.

## **What happened**

Mr K took out a car insurance policy with LV online. He accidentally drove into a bollard and made a claim to LV.

LV said Mr K had answered the question it asked about modifications incorrectly when he applied for the policy. LV avoided Mr K's policy.

LV later confirmed this wasn't the reason why it avoided his policy. It said Mr K hadn't answered the question about the make and model of the car correctly. And he wasn't the registered owner and keeper. LV considered this to be a careless qualifying misrepresentation, which entitled it to avoid the policy. LV said it wouldn't have provided cover for Mr K if it had known the correct details of the car.

Mr K brought his complaint to us and our investigator thought it shouldn't be upheld. She thought Mr K had failed to take reasonable care when providing details of the car. And that LV had shown it wouldn't have offered Mr K a policy if he'd provided the correct car details.

Mr K doesn't agree. He says he wants LV to show it properly followed the process in line with the relevant law when it avoided the policy for misrepresentation. He says LV hasn't provided this, so he has asked for an ombudsman's 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.

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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.

LV thinks Mr K failed to take reasonable care not to make a misrepresentation when he provided details of the car. The website Mr K used pre-populated the make and model of the car based on the registration details provided. These details didn't match the actual model of Mr K's car. Additional help for this question on the website read:

*"Not the right vehicle? Update the registration number, manually enter the vehicle details. Please check the details are correct and make any required changes. "*

So I think Mr K was given the option to manually correct the information about the model of the car when he applied for the policy.

Mr K says he understood the details provided were as per the V5 registration document. LV said it's possible that when the registration details were changed in 2014, details weren't updated completely with - or by the DVLA. This isn't something LV is responsible for - as the onus is on the customer to provide correct details of the car when applying for the policy.

I understand Mr K says a representative completed the application for him - but it is the customer who forms the contract with LV - and so it was Mr K's responsibility to ensure the information provided was correct. So I think Mr K failed to take reasonable care when submitting details about the car.

LV says if it had known the correct information about the model specification of the car, it wouldn't have offered Mr K a policy. LV has provided evidence that its underwriting criteria excluded cover for this type of vehicle. I understand Mr K is unhappy that he hasn't been provided with evidence LV correctly followed the law when avoiding his policy. But an insurer's underwriting criteria is commercially sensitive and so can't be shared with customers. We can however ask an insurer to share it with us - to check its treated a customer fairly. Having reviewed this information, I'm satisfied LV wouldn't have offered Mr K - or any other customer in the same position - a policy.

This means I'm satisfied Mr K's misrepresentation was a qualifying one.

LV has said Mr K's misrepresentation was careless because he didn't take reasonable care to check the details matched the make and model of his car when he answered the question about the registration details.

I agree that Mr K's misrepresentation was careless, because while the correct registration plate details were entered, I don't think reasonable care was taken to check if the pre populated information matched the car.

As I'm satisfied Mr K's misrepresentation should be treated as careless, I've looked at the actions LV can take in accordance with CIDRA.

LV avoided Mr K's policy - cancelled it as if it didn't exist - and it refunded the premium Mr K paid for the policy. I think this was fair and in line with CIDRA. As the policy effectively didn't exist, this means there is no cover for Mr K's claim.

I agree that the original reason for LV avoiding the policy was incorrect - which is what LV has confirmed in its letter to Mr K dated 31 March 2021. I think that LV has acknowledged its original error - but this doesn't change the outcome. The avoidance still stands and the refund of premium was correct for the revised reasons given.

I understand Mr K is very disappointed. But in light of what I've seen, I think LV's decision to avoid the policy for careless misrepresentation was reached reasonably and in line with CIDRA. So I'm not asking it to do any more.

### **My final decision**

For the reasons set out above, I've decided not to uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 13 December 2021.

Geraldine Newbold  
**Ombudsman**