

The complaint

Mr P is unhappy Advantage Insurance Company Limited (Advantage) avoided his motor insurance policy and declined his claim.

What happened

In November 2021, Mr P took out a motor insurance policy with Advantage via a price comparison website. In February 2022, he made a claim on the policy. Advantage then said he'd made a qualifying misrepresentation, as he didn't disclose the fact his car had been modified with an LPG conversion. They therefore avoided the policy and declined his claim. As they concluded the misrepresentation was careless, they also refunded the policy premiums.

Mr P said he didn't think he'd been treated fairly, and he didn't declare the LPG conversion as it was listed in the logbook when he purchased the car. An investigator at our service then considered the complaint but didn't uphold it. He said Advantage had acted reasonably and he didn't think Mr P's explanation for not declaring the modification changed things.

Mr P then requested a final decision. He said he could accept the fact his policy had been avoided and the claim refused, but he didn't want Advantage's decision to negatively impact him, when he applied for a new policy. He also said he'd recently become aware, that if he'd applied for the policy via a different website, the fuel type wouldn't have been listed as petrol. Our investigator empathised with his position, but still concluded the avoidance was fair. He also agreed with Mr P that depending on the questions asked, he would need to disclose the policy avoidance during future applications for insurance.

Mr P remained unhappy, so I've considered the complaint afresh.

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 they 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.

Advantage thinks Mr P failed to take reasonable care not to make a misrepresentation when

he applied for the policy and didn't declare the LPG conversion modification.

I've looked at the sales journey that was completed when Mr P applied for the policy via the price comparison website. The website automatically generated some details about Mr P's car based on the registration number he provided. This included the fact the fuel type was listed as petrol.

As part of the application Mr P was asked :

"Does the car have any modifications?" Next to this was a blue question mark which Mr P could have clicked on for more information. It said: *"Modifications are non-standard changes made to the car after manufacturer. These include new spoilers, alloy wheels etc but a tow bar doesn't need to be listed."*

If Mr P had answered yes to the above question, he would then have been able to declare the fact his car had an LPG conversion, as it was an option listed under the drop down menu.

I appreciate Mr P has said he didn't think he was required to disclose the modification as it's listed in the logbook. However, as the question asked about any modifications, and the additional explanation said this included all non-standard changes post manufacturer, I'd expect a reasonable consumer and therefore Mr P to declare it. In addition, as the online form automatically detailed the fuel type for his car as petrol, this should reasonably have prompted him to consider the LPG conversion. I'm therefore satisfied Mr P didn't take reasonable care not to make a misrepresentation.

Mr P has said, the fuel for his car wouldn't have been listed as petrol if he'd applied via a different website. However, I'm only required to consider the actual website Mr P used when he applied for the policy. And as he was aware of the modification having seen it in the logbook, I'd reasonably have expected him to have declared it. The fact the fuel was listed as petrol may have prompted him to think about the LPG, but it wouldn't take away from his responsibility to declare the modification in any event.

I also note that after taking out the policy, Mr P was provided with a statement of insurance. This detailed the fact he hadn't declared any modifications and highlighted the importance of checking all the information was correct. As such, this was an additional opportunity for Mr P to rectify the issue and declare the LPG conversion.

Advantage have provided their underwriting criteria which shows they wouldn't have provided Mr P with the policy, had he disclosed the modification. So, I'm satisfied his misrepresentation was a qualifying one under CIDRA. They've also said Mr P's misrepresentation was careless, rather than deliberate or reckless. As this is the most favourable classification for Mr P, I see no reason to interfere with this decision.

I've lastly looked at the actions Advantage can take in accordance with CIDRA, in the event of a qualifying careless misrepresentation. These include avoiding the policy (treating it like it never existed) and refusing all claims. In such circumstances, they are also required to refund the policy premiums. As that reflects Advantage's actions here, I'm satisfied they have acted fairly and need not do anything more in relation to this complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or

reject my decision before 15 December 2022.

Claire Greene
Ombudsman