

The complaint

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

What happened

Mr G had a motor insurance policy with Advantage which he applied for via a price comparison website. In February 2022 his car was stolen, so he made a claim.

As part of their investigation, Advantage reviewed the sales invoice for Mr G's car and a list of modifications he forwarded to them from the specialist dealership he purchased his car from. I'll refer to this dealership as "O" throughout. The modifications list included alloy wheels, a carbon fibre body styling kit, front grille, carpet mats and lettering set.

Advantage then asked Mr G to explain the reasons the modifications weren't disclosed when he applied for the policy. His wife responded on his behalf and said Mr G was aware of the modifications, but she didn't think he was asked to disclose them.

Advantage then said Mr G had answered the question he was asked about modifications incorrectly when he applied for the policy, as none were disclosed. And they considered this to be a careless qualifying misrepresentation which entitled them to refuse all claims and avoid the policy. They also refunded the policy premium and apologised for providing some poor customer service while considering the claim.

Mr G then said he didn't disclose the modifications as he purchased the car in its modified condition, and it was sold as seen. He also felt Advantage should reasonably have known all the details for his car, as he entered the correct registration number on the price comparison website, and this showed it was a Land Rover Sports.

Our investigator didn't think the complaint should be upheld. He agreed Mr G had made a qualifying careless misrepresentation and said Advantage had acted fairly in response. In reaching this conclusion, he relied on the sales invoice which said the car had been sold by O.

Mr G then asked for an ombudsman's decision without giving any reasons. I then requested that the investigator ask him some additional questions about the sales process for the policy and the car.

In response, Mr G said he answered *"no" to the question "Has the car been modified in any way"* as he thought this only related to changes made to the engine. And he didn't recall clicking on the help icon. He was aware his car had a body styling kit fitted and this made it different to a standard model, but he didn't think this was a significant change or needed to be disclosed as a modification. He also thought the other modifications came as standard with the car until Advantage told him otherwise.

Before purchasing the car, he visited his local O showroom and he accessed the company's website. The car was sold to him personally by the sales manager and he was attracted to it

because despite it being a second-hand car it was practically new.

Having received the additional information I requested, I've now completed my review of the complaint and reached a 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.

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.

Advantage thinks Mr G failed to take reasonable care not to make a misrepresentation when he applied for the policy online and answered a question about modifications to his car. They've therefore provided a copy of the relevant question and as mentioned above, I can see that he was asked:

"Has the car been modified in any way?"

Next to the question was an "Need help" icon which provided more information. This said:

"If you or a previous owner has made a change from the manufacturer's original specification, such as alloy wheels, air conditioning, bodywork, exhaust system, suspension or tinted windows, add it here. If you are unsure if your car's been modified check its previous history to find out."

If Mr G had answered yes to the above question, he would then have been asked to select the specific modifications to his car from a drop down menu.

Mr G has said Advantage should have known the correct details for his car based on the registration number he entered on the price comparison website. However, I wouldn't expect an insurer to identify car modifications in this way. It was also reasonable for Advantage to rely on the information Mr G provided in response to the specific modifications question he was asked. And there is no dispute that his car was a Land Rover Sports.

As Mr G's car had several modifications, I'm satisfied the above question wasn't answered accurately. I've therefore thought carefully about Mr G's explanation for answering it in the way that he did. Mr G was asked if his car had been modified in "*any way*" which is a clear and specific question. I'm also satisfied a reasonable consumer wouldn't interpret it to mean they only needed to disclose modifications to their car's engine.

Mr G has said that except for the body styling kit, he wasn't aware of the modifications to his car. However, as he purchased it directly from an O showroom, I find it unlikely the sales manager wouldn't have provided this information as part of the sale. This is because all the modifications were visible, the car was almost new, and the modifications were carried out by O. I also note that as part of their branding, O describe themselves as a leading creator of bespoke cars. So, while I appreciate Mr G has said the car was sold as seen, I find it unlikely he wasn't aware of the significance of purchasing his car from O or the modifications they made to it.

In any event, as Mr G has indicated that he knew his car had a body styling kit, I'm satisfied he should reasonably have disclosed it as a modification. And if he was unsure, he could have clicked on the help icon or checked with O before he proceeded with the application. So, on balance, I'm satisfied Mr G didn't take reasonable care not to make a misrepresentation when he applied for the policy and answered the above question.

I also note that after Mr G purchased the policy, he was sent a statement of fact which asked him to check all the information he provided was correct. This document said he hadn't disclosed any modifications and "*A modification's any alteration to your car from the manufacturer's standard specification*". This was therefore an additional opportunity for Mr G to reconsider his answer and disclose the correct information about his car.

Advantage have provided their underwriting criteria which shows what they would have done if Mr G had disclosed the modifications. This shows they wouldn't have offered him a policy. So, I'm satisfied Mr G's misrepresentation was a qualifying one.

Under CIDRA, a misrepresentation can be deliberate or reckless, or careless. Advantage have said Mr G's misrepresentation was careless. As this offers the most favourable outcome for Mr G (compared to it being categorised as deliberate or reckless) I see no reason to interfere with this decision.

As I'm satisfied Mr G's qualifying misrepresentation was careless, I've looked at the actions Advantage can take in accordance with CIDRA. These include avoiding the policy and refusing all claims. However, they must also refund the policy premium. As this reflects Advantage's actions here, I'm satisfied they have treated Mr G fairly.

Lastly, I appreciate Mr G feels Advantage should have considered his claim faster, but every insurer is entitled to validate a claim and the relevant information about his car's modifications only came to light at a late stage. Advantage have also acknowledged providing some poor customer service in their final response and I think that was fair.

So, while I appreciate this decision will come as a disappointment to Mr G, and the loss of his car had a significant financial impact, I see no grounds for directing Advantage to do anything more.

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 G to accept or reject my decision before 16 March 2023.

Claire Greene
Ombudsman