

The complaint

Mr Z complains about Liverpool Victoria Insurance Company Limited (“LV”) and their decision to decline the claim he made on his motor insurance policy, before also avoiding the policy he held.

What happened

In early October 2022, Mr Z took out a motor insurance policy underwritten by LV. Unfortunately, around 16 October, Mr Z’s car was stolen. So, he contacted LV to make a claim.

LV attempted to validate Mr Z’s claim. And when doing so, they thought Mr Z had misrepresented during his application for the policy by failing to disclose the car’s modifications. So, LV declined the claim and avoided the policy, keeping the premiums Mr Z had already paid. Mr Z was unhappy about this, so he raised a complaint.

Mr Z thought the modifications LV referred to were factory fitted extra’s, rather than changes that would be classed as a modification. And he thought the modifications referred to were low value changes, or changes required for maintenance purposes, that didn’t increase the performance of the car. Mr Z explained he’d answer the question about modifications based on the information included within the V5 document. So, he didn’t think he had purposefully misled LV, or misrepresented information, when taking out the policy. And because of this, he felt the claim should be accepted and LV’s systems altered to prevent similar situations arising in the future.

LV responded to the complaint and didn’t uphold it. They thought they had declined the claim fairly, in line with relevant rules and regulations, as they were satisfied Mr Z’s car had modifications that weren’t fitted to it originally when it was built. And why they thought they were fair to class the misrepresentation as deliberate, they offered to change the misrepresentation classification to “reckless”, so the claim and policy information weren’t visible externally. But they didn’t think they needed to do anything more. Mr Z remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it in part. They were satisfied that, by Mr Z stating there were no modifications during the policy application, there was a qualifying misrepresentation. So, they thought LV were fair to decline the claim. But our investigator thought the misrepresentation was careless rather than deliberate or reckless. So, in line with the rules set out in the Consumer Insurance (Disclosure and Representations) Act 2012 (“CIDRA”), our investigator thought LV should refund all premiums paid by Mr Z for the policy, plus 8% simple interest from the date of the claim decline to the date of payment.

LV accepted this recommendation. But Mr Z didn’t. He provided several comments explaining why, which included and are not limited to his belief there are systemic and structural issues within LV’s business process, and industry regulations, which placed him at a disadvantage. He maintained his belief he provided LV with all the necessary information on good faith and that this showed he hadn’t intended to misrepresent, nor did he think he could’ve avoided the situation based on the knowledge he had at the time he took out the

policy. So, for these reasons and others I haven't described explicitly, Mr Z maintained his belief that LV had acted unfairly. As Mr Z didn't agree, the complaint has been passed to me for 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.

Having done so, I'm upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I explain why I've reached my decision, I want to set out exactly what I've been able to consider. I note Mr Z has provided extensive comments surrounding what he feels is systemic and structural issues within LV's business processes, and the insurance industry as a whole. Specifically, Mr Z feels insurance companies should request photos of any car they insure, which he thinks would've prevented the situation he's now in on this occasion.

But it is not my role, or the role of our service, to comment on an insurer's business processes as these form part of a business' commercial decision making. Any issues surrounding this, or the rules and regulations insurers work within as a whole, would fall under the remit of the industry regulator, the Financial Conduct Authority. So, I won't be commenting on these aspects of Mr Z's concerns any further. My role, and the role of our service, is to consider the individual circumstances of Mr Z's complaint and decide whether I think LV have acted fairly and reasonably in that individual situation. So, this is what I've done.

First, I want to recognise the impact this complaint has had on Mr Z. I've no doubt it would've been upsetting for Mr Z to discover his car had been stolen. And I recognise this would've been made worse due to the circumstances surrounding the theft, and the increased costs for Mr Z to make his way home. I also appreciate Mr Z took out his insurance policy with LV to assist him both practically and financially in situations such as the one he found himself in. So, when LV declined the claim and avoided Mr Z's policy without any premium refund, I can understand the shock this would've caused and why Mr Z would feel as though he'd been treated unfairly.

But for me to say LV should reverse their decision to decline the claim, and reinstate Mr Z's policy, I'd need to be satisfied LV failed to act within the rules and regulations set out within CIDRA, which detail the actions an insurer can take when they feel misrepresentation has taken place.

To ensure LV acted in line with CIDRA, I first need to consider whether a misrepresentation has taken place. And to consider this, I must think about the question LV asked, and the answer Mr Z provided.

I've seen a screenshot of the system Mr Z would've seen when applying for the policy. And I've seen Mr Z would've been asked "Does the car have any modifications", where he would've been given the option of selecting "Yes" or "No". I note Mr Z himself doesn't dispute this question was asked, or that he answered "No". And I can see under the question itself, the term "*modifications*" was described as "*modifications are non-standard changes made to the car after manufacture, including things like new spoilers or alloy wheels. For the insurance to be valid, you must include all modifications*".

So, I'm satisfied the question LV asked was clear and it provided Mr Z with enough information to understand the question and have the opportunity to answer the question factually.

As I've already explained, it is accepted that Mr Z answered "No" to this question. And by doing so, he was confirming the car he was insuring hadn't been modified with non-standard changes in any way, after it's manufacture.

But I've seen LV feels the car was modified, and they've provided several items they feel weren't included with the car at the point of it's manufacture. So, I've had to consider the evidence available to me to decide whether I think there were most likely modifications to Mr Z's car at the time he took out the policy. And I think there were.

I've seen during the claim process, Mr Z sent photos of his car to LV to support his claim. And when these were sent, Mr Z confirmed that the previous owner imported the car, and undertook *"works/servicing and maintenance, and renovations between date of importation"* and the date he purchased it.

I've also seen a letter, dated the day after the policy had been taken out, from the seller to Mr Z. And this letter states *"Prior to the sale this vehicle went through extensive repairs, restoration and legal upgrades including labour costs listed below"* before listing several items, which include alloy wheels, an exhaust system and an entertainment system.

Crucially, within this letter, I think the seller makes it clear there were legal *"upgrades"*. And I'm satisfied an upgrade would be a modification that improved the original specification at manufacture, even though I'm aware it was made at a high specification at that time.

And I've seen LV's in house engineer considered the specification of the car, alongside the photo's Mr Z provided and the information available from the seller and deemed the car to have modifications. As the engineer was the expert, I don't think LV were unfair to rely on the engineer's opinion. So, because of the above, I'm satisfied there was a misrepresentation, as I think there were modifications to the car Mr Z insured.

I then need to think about whether the misrepresentation was a qualifying misrepresentation under the terms of CIDRA. So, I need to be satisfied that, had Mr Z stated there were modifications, this would've affected the terms of the contract LV offered. And LV have provided our service with historical underwriting criteria, alongside comments from their underwriting department, which confirm that, had a modification been declared, then cover wouldn't have been provided. So, I'm satisfied there was a qualifying misrepresentation and that LV acted fairly and reasonably when coming to this conclusion themselves.

But the actions an insurer such as LV can take when there has been misrepresentation is dependent on their classification of the misrepresentation. In this situation, LV initially deemed the misrepresentation to be deliberate, before offering to reduce this to reckless. In either situation, the actions LV can take are the same. When a misrepresentation is deemed to be either deliberate or reckless, an insurer can decline a claim, avoid a policy and keep any premiums that have been paid.

But I note our investigator didn't think it was fair to classify the misrepresentation as either deliberate or reckless. And instead, they thought it should be classified as careless, which LV have since accepted.

For completeness, I've thought about whether I agree. And in this situation, I do. The onus is on an insurer to show a customer has acted deliberately or recklessly when misrepresenting. And in this situation, I don't think LV have shown the misrepresentation met that bar.

Mr Z has confirmed at the time he insured the car, he hadn't received the letter from the seller setting out exactly what works had been done to the car. And Mr Z has explained he isn't a motor expert and so, he wasn't sure what work had been completed on a service/maintenance basis, or what would be deemed an upgrade and so, a modification.

I think Mr Z's testimony is plausible. And based on Mr Z's V5, I can understand why Mr Z would've decided to answer the modification question as "No", based on his understanding of the work completed on the car at the time. But crucially, I do think it was Mr Z's responsibility to ensure he was answering the questions as accurately as he could, at the time he applied for the policy. And, considering the fact Mr Z had visited the car in person and was still waiting for confirmation of the work completed on the car from the seller, I think it was ultimately Mr Z's responsibility to ensure his answer was factual and correct.

In this situation, I don't think it was. And so, I think Mr Z acted carelessly when misrepresenting, rather than deliberately and recklessly. Because of this, I do think LV acted unfairly when classifying the severity of Mr Z's misrepresentation and so, I've thought about what I think they should do to put things right.

Putting things right

When thinking about what I think LV should do to put things right, any award or direction I make is intended to place Mr Z back in the position he would've been in, had LV acted fairly in the first place.

In this situation, had LV acted, I think they would've classified Mr Z's misrepresentation as careless, rather than deliberate or reckless. So, I think the claim would always have been declined, and the policy avoided, as LV are entitled to do so under the rules set out within CIDRA. So, I'm not directing LV to do anything differently regarding this.

But, had LV classified the misrepresentation as careless, under the rules set out within CIDRA they should've refunded any premiums paid by Mr Z for the policy. And it's not in dispute that they didn't do this.

So, I think the premiums Mr Z paid should now be refunded. And I think LV should apply 8% simple interest on this refund, from the date of the policy decline to the date of payment, to recognise the period of time Mr Z has been without access to these funds.

I understand this isn't the outcome Mr Z was hoping for. And I want to reassure Mr Z I've considered all the comments he's made, which made clear his strong feelings towards LV, their decision and the rules the industry operate within overall. But as I've explained earlier within my decision, my role is to focus solely on the individual circumstances of this complaint. And while I don't think Mr Z purposefully attempted to misrepresent when taking the policy, I think it's clear the information he gave LV was incorrect. And, that if the information he gave had been correct, LV wouldn't have provided the policy. So, I think they've acted fairly, and in line with CIDRA, when not accepting Mr Z's claim.

My final decision

For the reasons outlined above, I uphold Mr Z's complaint about Liverpool Victoria Insurance Company Limited and I direct them to take the following action:

- Refund all premiums Mr Z paid towards the policy plus 8% simple interest from the date of the claim decline to the date of payment.

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

reject my decision before 8 September 2023.

Josh Haskey
Ombudsman