

The complaint

Ms M complains that Covea Insurance Plc (Covea) unfairly avoided her motor insurance policy and refused to pay her claim.

What happened

Ms M took out a motor insurance policy with Covea through an online insurance price comparison site.

After she was involved in an incident in her vehicle she contacted Covea to try and make a claim.

Covea said she'd answered the question it asked about modifications to her vehicle incorrectly. And it considered this to be a reckless qualifying misrepresentation, which entitled it to avoid her policy, decline her claim because of this and keep the premium she'd already paid

Ms M brought her complaint to us, and our investigator thought it should be upheld. They agreed Ms M had made a misrepresentation when applying for her policy, in failing to declare the various modifications to her vehicle. But they were not satisfied Covea had established that Ms M's misrepresentation was either deliberate or reckless. They were of the view that it should be treated as a careless misrepresentation and Covea should refund her policy premiums.

Covea doesn't agree with the investigator and has asked for an ombudsman's decision. It said a vehicle is considered modified if it has been changed in any way since it was first supplied by the manufacturer. It said if Ms M was unsure whether changes to the vehicle were classed as a modification she should have checked before purchasing.

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.

Covea thinks Ms M failed to take reasonable care not to make a misrepresentation when she stated in her application for a motor insurance policy that the vehicle had no modifications.

I've looked at the question asked on the online insurance comparison site. It asks if the *vehicle has any modifications*. Ms M answered *no* to this question. I saw there was also guidance given on the site to support this question. It said *modifications are non-standard changes made after manufacture, including new spoilers, alloy wheels etc.*

I do not think Ms M took reasonable care to answer this question accurately. I saw Ms M's vehicle was modified and the modifications included alloy wheels, side steps, rear roof spoiler, tinted glass, and a non-standard front bumper.

Covea has provided evidence of its unwriting criteria that shows it would never have offered her cover if it had been made aware the vehicle was modified.

This means I'm satisfied Ms M's misrepresentation was a qualifying one.

Covea has said Ms M's misrepresentation was reckless because the vehicle was modified, and she failed to disclose this.

Although I agree that she made a misrepresentation when she failed to disclose the modifications, I do not think there is any evidence to be certain this was reckless. Ms M said she bought the vehicle as it was and as the modifications had been carried out prior to the purchase she was not aware that it had been modified. I am not convinced there is any evidence that Ms M deliberately answered the application question regarding modifications incorrectly. I don't agree that Ms M's misrepresentation was reckless

As I'm satisfied Ms M's misrepresentation should be treated as careless I've looked at the actions Covea can take in accordance with the remedies detailed in CIDRA. Covea are able to

- avoid the policy from the point of misrepresentation, which in this case is the start of the policy in January 2023
- not deal with the claim
- return any unused premiums.

In this case Covea avoided Ms M's policy back to the start, did not pay her claim and did not refund the premiums paid.

As I'm satisfied Ms M's misrepresentation was careless not reckless or deliberate, I don't think Covea are acting fairly by not refunding her premiums.

As CIDRA reflects our long-established approach to misrepresentation cases the fair and reasonable outcome in this complaint is Covea should avoid the policy from the point of misrepresentation, which was the start of the policy, not deal with Ms M's claim, and return the premiums paid.

My final decision

For the reasons set out above, I've decided to uphold Ms M's complaint.

I require Covea to record this as a careless misrepresentation and return the policy premiums paid to Ms M.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 27 December 2023.

Sally-Ann Harding
Ombudsman