

The complaint

Mr M complains that Society of Lloyd's (Lloyd's) avoided his motor insurance policy and didn't deal with his claim.

Reference to Lloyd's includes its agents.

What happened

Mr M held a motor insurance policy with Lloyd's. When his vehicle was damaged by a flood he made a claim for the damage.

When investigating the claim, Lloyd's said Mr M had answered the question about modifications to his vehicle incorrectly. It said it thought this was a deliberate or reckless misrepresentation which entitled it to avoid his policy. It said because of this, there was in effect no policy in place, so it didn't need to deal with his claim.

Mr M didn't think this was fair and complained, he said all the modifications in his van could be removed and didn't think he needed to tell Lloyd's about them.

Lloyd's didn't change its stance, so Mr M brought his complaint here.

One of our Investigators recommended it be upheld. He thought Mr M had made a qualifying misrepresentation when answering the question about modifications to his vehicle. But he thought it fairer to treat that misrepresentation as careless. He said this meant Lloyd's were still entitled to avoid Mr M's policy and not deal with his claim. But our Investigator thought Lloyd's needed to refund Mr M the premium he'd paid.

Mr M accepted our Investigator's assessment. Lloyd's didn't and asked for an Ombudsman's decision. It maintained the misrepresentation was deliberate or reckless because Mr M knew his vehicle was modified when he took the policy out yet told Lloyd's it wasn't.

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 it. I'll explain why.

- Lloyd's said Mr M made a deliberate or reckless qualifying misrepresentation when he incorrectly answered the question he was asked about his vehicle's modifications. It's said under the relevant law, The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), its entitled to avoid the policy, not deal with any claims and keep any premium it's been paid.
- Mr M was asked "*Are there any changes from the manufacturer's standard specification whether mechanical, cosmetic or customisation?*" He answered "*no*". This wasn't the case. His van had been modified and had a bed and storage in the

back. So Mr M did make a misrepresentation.

- CIDRA says that for a misrepresentation to be a qualifying one, Mr M needs to have failed to take reasonable care when making it. I'm satisfied he failed to take reasonable care here. The van is clearly customised, and I'm satisfied a reasonable consumer would have answered the question Mr M was asked about modifications "yes".
- Lloyd's has shown that if Mr M had told it about the modifications to his van, it wouldn't have offered him cover. Therefore I'm satisfied the misrepresentation Mr M made is a qualifying one under CIDRA.
- Lloyd's has treated the misrepresentation as deliberate or reckless. It's said Mr M was asked a clear question and the van was clearly modified, so Mr M must have known the answer he was giving was wrong.
- But I disagree here. Whilst the question is clear, and as set out above, I think a reasonable consumer would have declared the modifications. Mr M's reasons for not doing so, while clearly incorrect, show that he thought about the question he was asked, and about the answer he was giving. That means the misrepresentation can't be treated as reckless. Mr M said the modifications can be removed at any time and that he was advised he didn't need to tell Lloyd's about them as a result. This is clearly incorrect, but I think it indicates Mr M didn't deliberately tell Lloyd's something that was untrue. He's just incorrectly thought the modifications to his van weren't something he needed to disclose. So, the misrepresentation can't be treated as deliberate either.
- This means I find it fairer to treat the misrepresentation as careless.
- Under CIDRA, because Lloyd's has shown it wouldn't have offered cover had it been told about the modifications, it's entitled to avoid Mr M's policy and not deal with his claim. But because the misrepresentation was careless, it needs to return Mr M's premium to him.

My final decision

For the reasons set out above, I uphold this complaint. To put things right I require Society of Lloyd's to:

- Refund Mr M's premium for the policy it avoided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 July 2024.

Joe Thornley
Ombudsman