DRN-4823460

The complaint

Mr S complains about Advantage Insurance Company Limited (Advantage) cancelling his motor insurance policy due to non-disclosure of his vehicle being wrapped.

Any reference to Advantage in this decision includes their agents.

Mr S was supported by a representative in bringing his complaint to this Service. References to Mr S include his representative.

What happened

Mr S took out a motor insurance policy with Advantage in November 2022. In March 2023 his vehicle was stolen in the early hours of the morning. He contacted the police, and the vehicle was found later that day and taken to a police compound. Mr S also contacted Advantage to tell them about the theft.

When Mr S collected his vehicle it was running badly (the police thought the vehicle had been mis-fuelled). Mr S lodged a claim with Advantage for the damage and it was collected by their agent (C) later in March 2023. Based on C's inspection report, Advantage offered £8.182 at the end of March as settlement for the vehicle as a total loss. Mr S rejected the offer as he thought the value much higher (nearer £19,000). He sent Advantage information on the value of what he considered comparable vehicles.

Time passed and Mr S contacted Advantage to see what the status of his claim was, to be told they were investigating a modification to his vehicle, that the vehicle was wrapped. Advantage then wrote to Mr S in April 2023 asking why he hadn't declared the vehicle was wrapped. Mr S said the wrap was a temporary film sold to him as a 'protective wrap' designed to protect the vehicle's paintwork and easily removed.

Advantage then wrote to Mr S in May 2023 to say they were cancelling his policy from the start date in November 2022 because he hadn't told them about the vehicle wrap. Had he done so, they wouldn't have offered to insure him. As the policy had been cancelled from November 2022, it wasn't in force at the time of the theft of his vehicle and his claim. So, the damage to his vehicle wasn't covered.

Mr S challenged Advantage's decision to cancel his policy and decline to cover his claim. He didn't think the policy wording on what constituted a modification indicated vehicle wrapping would be considered a modification, as it wouldn't substantially alter the risk for Advantage. The wrap was a protective film to protect the vehicle paintwork and wouldn't pose an additional risk to Advantage. If it was considered a modification, it should have been listed as such in the examples set out in the policy wording. Mr S also said he'd been without his vehicle for over two months and would have been entitled to a hire car during that period, which he thought a continuing loss to him. He wanted Advantage to reinstate his policy, settle the claim at a valuation of £19,460 and compensate him for the loss of use of his vehicle (£20,024 for 63 days at £220 per day).

Advantage didn't consider Mr S's challenge as a complaint, so didn't issue a final response.

Mr S then complained to this Service (July 2023). He said it was unfair to cancel his policy because of the vehicle being wrapped. And that Advantage were aware of the vehicle being wrapped before they'd initially offered a settlement (it was mentioned in C's report shortly after the vehicle was recovered to them). He'd lost out financially by Advantage withdrawing their settlement offer. He wanted Advantage to reinstate his policy, make settlement for his vehicle and compensate him for the loss of use of his vehicle.

Our investigator didn't the complaint, concluding Advantage didn't need to take any action. He thought Mr S had been asked a clear, specific question about whether his vehicle was modified when he took out his policy and should have checked with Advantage whether they considered a wrap to be a modification. Advantage had shown their underwriting criteria meant they wouldn't have offered the policy had they known the vehicle was wrapped, so their decision to treat Mr S's misrepresentation as a careless, qualifying one under the Consumer Insurance (Disclosure and Representation) Act 2012 (CIDRA) was reasonable. As such, Advantage acted in line with the remedies available under CIDRA in avoiding the policy and returning the premiums. While Advantage hadn't initially picked up the vehicle was wrapped, when making their settlement offer, it didn't change the fact the wrap wasn't acceptable to Advantage and wouldn't have covered the vehicle.

Mr S disagreed with the investigator's view and requested an Ombudsman review the complaint. He said he took reasonable care not to make a misrepresentation because the modifications listed as relevant were all performance enhancing (creating additional risk for Advantage). It was reasonable to assume vehicle wrapping didn't enhance the vehicle's performance (it was designed to protect the paintwork, so enhancing and maintaining the vehicle's value).

He also didn't think it reasonable to expect him to be aware of the requirements of CIDRA. If Advantage relied on CIDRA, it should have been stated in the application portal or policy terms and conditions. And if wrapping was considered a modification that meant Advantage wouldn't offer the policy, it should have been included in the list of modifications to be declared. He also thought the vehicle hadn't been modified, as it was in the condition it left the factory except for the plastic film covering. Nor was the vehicle's colour relevant as it didn't make any difference in underwriting terms.

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.

My role here is to decide whether Advantage have acted fairly towards Mr S.

The key issue in Mr S's complaint is whether Advantage acted fairly and reasonably in avoiding his policy due to a misrepresentation (not declaring his car was wrapped) and withdrawing their settlement offer for his vehicle. Advantage say Mr S should have declared the wrapping as a vehicle modification, had he done so they wouldn't have offered the policy. So, he made a careless, qualifying misrepresentation under CIDRA. This enabled them to avoid his policy and decline to cover his claim. Mr S says Advantage were aware of the wrapping before they made their settlement offer, so they should cover his claim.

In considering the issue, I've first looked at whether it's reasonable to say Mr S made a careless, qualifying misrepresentation under CIDRA when he took out his policy. Under CIDRA, a consumer needs to take reasonable care not to make a misrepresentation to an insurer. In considering this point, I've looked at the question Mr S was asked about vehicle modifications when he took out his policy. The question was:

"Has the car been modified in any way?"

Adjacent to the question is an icon that provides further clarification of the question, including the statement:

> *"A vehicle is considered modified if it has been changed in any way since it was first supplied by the vehicle manufacturer.*
>
> *This would include: Changes to the body work, suspension or brakes, cosmetic changes and changes to the engine management system or exhaust system.*
>
> *If you are unsure whether changes to the vehicle are classed as a modification, please check with your chosen provider before purchasing"*

I've noted the clarification includes reference to 'cosmetic changes', which I think reasonable to interpret would include wrapping, which changes the appearance of a vehicle (rather than its performance).

The Statement of Insurance issued when the policy was taken out records an answer of 'no' against 'modifications' in the table of 'Insured vehicle details'. Immediately below the table there's the following statement:

> *"**What's a modification?***
>
> *A modification's any alteration to your car from the manufacturer's standard specification. This includes, but isn't limited to:*
>
> - *Changes to the bodywork, such as spoilers or body kit*
> - *Changes to suspension or brakes*
> - *Alloy wheels*
> - *Audio/entertainment system*
> - *Changes affecting performance, such as to the engine management system or exhaust system*
>
> *Please note: optional extras fitted at the point of manufacture aren't classified as modifications."*

Taken together, while wrapping isn't specifically included in the list of example modifications, it would reasonably be considered to be a change 'in any way' or 'alteration' to the vehicle from that supplied by the vehicle manufacturer, or a 'cosmetic change'.

Mr S says if wrapping was considered a modification that meant Advantage wouldn't offer the policy, it should have been included in the list of modifications to be declared. However, the wording above indicates the list of example modifications isn't exhaustive, but illustrative. And Mr S would have been able to contact Advantage to determine whether they considered wrapping to be a modification (and whether it affected their offering the policy, or the terms of offering the policy).

So, I've concluded Mr S didn't take reasonable care when answering the question (not telling Advantage about the wrapping).

In terms of whether the misrepresentation was a qualifying one under CIDRA, I've seen Advantage's underwriting criteria which state vinyl wrapping (bodywork) is unacceptable. Which means they wouldn't have offered the policy (provided cover for the vehicle) had they

been aware of it when the policy was taken out. So, as they wouldn't have offered the policy (under any terms) I've concluded the misrepresentation was a qualifying one. Mr S argues the wrapping wouldn't affect the vehicle's performance, and therefore risk presented to Advantage. I understand why he makes the point, but it's for Advantage to determine what constitutes a risk and whether they are prepared to accept it, not Mr S.

Mr S says the wrapping was a protective film to protect the vehicle's paintwork, so he didn't consider it to be a modification when asked about it by Advantage. I accept what Mr S has said, which would support the conclusion that the misrepresentation was careless – not deliberate or reckless.

Given these conclusions, I think Advantage acted fairly and reasonably in line with CIDRA in treating Mr S not declaring the wrapping as a qualifying, careless misrepresentation. In those circumstances, CIDRA provides for a remedy for the insurer to avoid the policy and return the premiums. So, Advantage acted fairly and reasonably in avoiding the policy and returning the premiums to Mr S (and withdrawing their settlement offer).

Mr S also says it isn't reasonable to expect him to be aware of the requirements of CIDRA. If Advantage relied on CIDRA, it should have been stated in the application portal or policy terms and conditions. However, I don't agree, as it's reasonable to expect a consumer to answer questions accurately and completely when taking out a policy. And the Policy document states, under a heading *Your legal obligations*:

> *"Remember, it's an offence under the Road Traffic Act to make a false statement or to withhold information in order to get motor insurance.*
>
> *Under the Consumer Insurance (Disclosure and Representation) Act 2012, when you apply for insurance, you have a duty to take reasonable care to answer all questions as fully and as accurately as possible."*

The Insurance Product Information Document (IPID) also makes this clear when it states, under a Section headed *What are my obligations?*, the following:

> *"…You must answer any questions to your best knowledge or belief as if you don't this could affect your policy cover and/or ability to make a claim"*

So, I've concluded Mr S should reasonably have been aware of the requirements of CIDRA and what CIDRA requires of consumers, not to make a misrepresentation. That is, to provide accurate and complete answers to questions asked when taking out a policy.

On Mr S's point that the vehicle's colour isn't relevant as it didn't make any difference in underwriting terms, looking at photographs of the vehicle, the colour of the wrapped vehicle blue) is clearly different to that stated on the vehicle registration document (grey). As such, the vehicle's appearance has been changed by the wrapping. So, it's arguable this would of itself be a modification to the vehicle from that when it was manufactured, not just that the vehicle was wrapped
I recognise the point made by Mr S that Advantage (through C's report) should have been aware of the vehicle wrapping when they made their settlement offer. Advantage acknowledge the reference to the vehicle being wrapped in C's report was overlooked by the claims handler before they made their settlement offer. However, this doesn't change the fact the vehicle was wrapped when Mr S took out the policy, the wrapping wasn't declared at the time.

Taking all these points together, I've concluded Advantage acted fairly and reasonably in treating Mr S's non-disclosure of the vehicle wrapping as a qualifying, careless

misrepresentation, and in avoiding his policy and not accepting his claim. So, I won't be asking them to take any further action.

My final decision

For the reasons set out above, my final decision is that I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 July 2024.

Paul King
Ombudsman