DRN-4849722

The complaint

Mr G complains that Liverpool Victoria Insurance Company Limited ("LV") avoided his motor insurance policy (treated it like it never existed) and wouldn't pay a claim for the total loss of his vehicle.

What happened

Mr G had a motor insurance policy with LV covering his motorhome. His motorhome suffered a fire in July 2023, causing extensive damage. He made a claim.

LV thought Mr G's motorhome would be beyond economic repair. It offered to settle Mr G's claim but he didn't agree with the amount it'd offered him.

LV investigated his motorhome and said he'd modified it by fitting different wheels, a revised interior and by painting it in the colours and emblem of his favourite sports team.

Because Mr G hadn't told LV about the paintwork modifications, LV avoided (cancelled from inception) his policy and wouldn't pay his claim. It said it would ask his broker to return his premium.

LV said it had asked Mr G a clear question when he'd originally taken out cover, and it was reasonable to expect Mr G to tell it about the paintwork modifications when he'd renewed.

Mr G brought his complaint to this service and our investigator thought it wouldn't be upheld. She thought Mr G had acted recklessly in not telling LV about the modifications and LV wouldn't have covered his motorhome if it'd known about the modifications.

Mr G didn't agree with the view. He says he asked the DVLA when he painted the lower half of his motorhome and it told him it didn't need to be updated, as the colour of the top half was the same. He says he wants LV to settle his claim in the region of £12,000.

Because Mr G didn't agree, his complaint has been passed to me to make 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 read the file of evidence, I'm not upholding Mr G's complaint. I do appreciate this will come as a significant disappointment to him, and I'll explain why I've reached this decision.

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.

LV thinks Mr G failed to take reasonable care not to make a misrepresentation when he provided details of his motorhome. I can see from the file that he did tell LV about one modification, to the fuelling system, but didn't tell it about a range of other changes to it. LV thinks Mr G acted recklessly in taking this course of action.

It's important I say that the undisclosed modification LV have used to void his policy is the one about the appearance of his motorhome rather than the others. I can see from his later correspondence with this service that Mr G continues to discuss the other modifications, but as this case hinges around his motorhome's appearance, I'm only going to focus on that.

When he took out the policy, through a broker, it asked him about modifications to his motorhome. Mr G replied about the fuelling system, and the broker asked him were there any others. Mr G replied "no".

His policy contained the following section:

> *"Changes to your details*
>
> *You must tell your insurance advisor as soon as possible if any of the details on your proposal form or statement of fact change including:*
>
> - *Changes made to your vehicle which improve its… appearance…"*

From his evidence, Mr G has said he repainted the lower half of his motorhome and applied the emblem and name of his team. He clearly knew this would impact its status, as he contacted the DVLA to ask about the change of colour.

But in his later communication he does then say he assumed LV's response would be the same as DVLA. Unfortunately for Mr G, his assumption was incorrect.

LV says if it had known the full information about the paintwork modifications, it wouldn't have offered Mr G a policy. LV has provided evidence that its underwriting criteria meant that any modifications to Mr G's motorhome's paintwork would require a referral to an underwriter. Then, when it had details of the modification, it would assess whether it could provide cover.

Although the details of exactly what LV could and couldn't cover aren't laid out in its underwriting manual, LV supplied this service with a detailed email from a senior underwriter who confirmed in Mr G's case it would not have been able to provide him with cover.

I've read these details and I think they confirm LV wouldn't have provided cover. I'm not able to share the content of that email with him as it's commercially sensitive, but I'm able to say that the modifications to his paintwork and the addition of the emblem on his motorhome went against two of the criteria talked about by the senior underwriter.

So I think LV has treated Mr G in line with any other customer asking for cover for a similar modification and LV hasn't treated him unfairly.

This means I'm satisfied Mr G's misrepresentation was a qualifying one.

LV has said Mr G's misrepresentation was reckless and I agree because as I mention above, he was clearly aware that changing the colour of his motorhome was potentially problematic with the authorities, but he still didn't disclose it to LV. Mr G also made most of the other modifications himself to his motorhome, but still failed to tell LV about them.

As I'm satisfied Mr G's misrepresentation should be treated as reckless, I've looked at the actions LV can take in accordance with CIDRA.

LV avoided Mr G's policy – cancelled it as if it didn't exist – and therefore it doesn't need to pay his claim. I can see a note in the file saying it asked the broker to refund the premium Mr G paid for the policy, but I can't see whether this was actually done. Importantly, under CIDRA, LV doesn't have to provide a refund if it can show Mr G's misrepresentation was reckless, so if he has received a refund then that's fair.

I think LV's actions were fair and in line with CIDRA. What this means is, as the policy effectively didn't exist, there was no cover for Mr G's claim.

I can understand Mr G's frustration with LV originally offering to settle his claim – but this doesn't change the outcome. The avoidance still stands and this means LV doesn't have to pay his claim or refund his premium, even if it's already done so.

I know Mr G will be very disappointed by my decision. But from what I've seen, I think LV's decision to avoid the policy for reckless misrepresentation was reached reasonably and in line with CIDRA. So I'm not asking it to do any more.

My final decision

It's my final decision that 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 3 September 2024.

Richard Sowden
Ombudsman