

The complaint

Mr A complains that Liverpool Victoria Insurance Company Limited ("LV") voided his motor insurance policy and refused to pay his claim.

What happened

Mr A took out a motor insurance policy via a comparison website. The policy was underwritten by LV.

Mr A was involved in a car accident in December 2023 and made a claim to LV. LV offered Mr A a settlement for his car, but Mr A thought it was too low. LV later discovered that the car had been modified. It thought that Mr A had failed to take reasonable care to disclose this at the point of sale. It considered this to be a careless, qualifying misrepresentation under the law, which entitled it to void Mr A's policy and decline the claim. Because LV had paid some of the third party's costs, it didn't return any premiums to Mr A.

Mr A complained. LV considered the complaint but didn't change its stance. So, Mr A referred the matter to the Financial Ombudsman.

Our investigator thought the complaint should be upheld. He didn't think LV had shown that Mr A had given an incorrect answer at the point of sale, or that he'd failed to take reasonable care. So, he recommended LV reinstate the policy, pay the claim with interest, and pay £500 to Mr A for distress and inconvenience.

Mr A agreed with our investigator's view. LV didn't agree. It said it can't reinstate the policy. And it still thought Mr A had failed to disclose the tinted windows. It pointed out that Mr A had said he couldn't find an option to add the tinted windows during the sale, suggesting he knew his car was modified. LV said it was Mr A's responsibility to check whether his vehicle had been modified and whether it met the policy terms.

Because LV didn't agree, the complaint has come to me for a final 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 our investigator.

I've set out my reasoning below and how I think the complaint should be resolved. I've focused my comments on what I think is relevant. If I haven't commented on a specific point, it's because I don't believe it affects what I consider to be the right outcome.

The relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). This law grants insurers certain remedies if a consumer has made – what CIDRA refers to as – a qualifying misrepresentation. For a misrepresentation to be qualifying, it must be shown that the consumer failed to take reasonable care not to make

the misrepresentation. CIDRA sets out a number of considerations for deciding whether a consumer has failed to take reasonable care, including how clear and specific the insurer's question was, and any relevant explanatory material that was available at the time.

LV says Mr A failed to take reasonable care when answering the following question on the comparison site:

"Does the car have any modifications?"

There was an information prompt below that said, "What are modifications?". This advised:

"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."

Mr A answered "No".

LV's engineers believe the windows of Mr A's vehicle were too dark to be standard, so I accept Mr A's answer was likely wrong. But it isn't enough for LV to show that the answer was wrong. It also has to show that Mr A failed to take reasonable care when he gave it.

The question asked about modifications. The guidance did not mention tinted windows. I appreciate LV has said every modification can't reasonably be listed, and I agree. But the guidance Mr A was given is highly relevant. And it explained that modifications are changes that are non-standard and made after the car has been manufactured. The test for whether a consumer took reasonable care is set out in CIDRA. The standard of care required is that of a 'reasonable consumer'. So, I've had to consider whether a reasonable consumer ought to have known that this particular vehicle, in the circumstances of this complaint, had undergone a non-standard change after the point of manufacture.

LV has provided photos of the vehicle following the accident. I've reviewed these carefully. I accept that the rear windows look a little darker than the front. But I don't think it's unusual for rear windows to be manufactured darker. Having reviewed the photos, I don't think the windows were so dark that a reasonable consumer ought to have known that they were non-standard and darkened after the point of manufacture.

Further, LV hasn't shown to what extent the windows were tinted, or how this compares to the standard for Mr A's vehicle, or vehicles in general. While I appreciate the engineer was able to spot that they were darker than the manufacturer would make them, this isn't enough to say that a reasonable consumer, without the engineer's expertise, would have realised this.

LV has provided reports from a HPI provider and a vehicle valuation provider to show that window tinting wasn't an option that the factory offered for Mr A's vehicle. But Mr A bought the vehicle second hand. And the reports don't show what comes with the car as standard. So, even if a reasonable consumer accessed these reports, I don't think it would have been readily apparent that the windows were non-standard.

I appreciate LV thinks Mr A ought to have researched his vehicle, but I haven't seen anything to suggest that there was something that would have prompted him to do so. I also don't think the windows looked so unusual as to prompt a reasonable consumer to purchase specialist reports to check whether they were standard, optionally upgraded, or changed after the point of manufacture.

In terms of the sale, Mr A has provided evidence from the person he purchased the car from. They've stated they were told the car had no modifications or alterations when they bought

it. They've also stated they made no modifications to it. And Mr A's testimony has been consistent; that the windows were as they were when he bought the car. So, I don't think the purchase history of the vehicle would have suggested that the windows had been modified.

LV has said that Mr A knew the car was modified because he said there wasn't an option to add the tinted windows at the point of sale. I've listened to this call. LV's agent asked Mr A why he didn't tell them about the tinted windows. He replied, "I didn't know, there was no option". I think if Mr A had been asked whether his car had tinted windows, he would have likely said yes. But, instead, Mr A was asked whether his car had any modifications. And I've explained above why I don't think the guidance would have prompted a reasonable consumer to know that the windows of this vehicle had been modified. I also don't think the call demonstrates that Mr A knew his vehicle had been modified.

This is further supported by LV's final response letter, where it acknowledged that Mr A didn't know the windows were non-standard. LV wrote:

"The tinted windows are a nonstandard change that has been made after manufacture. Although I appreciate it's not something you were aware of, unfortunately it's something that needed to be disclosed to us".

For Mr A to have disclosed that his car had been modified, he would have needed to know that the windows were non-standard. And I don't think it's fair for LV to say that he should have disclosed something of which he wasn't aware.

I recognise that LV wouldn't have offered cover. But LV hasn't persuaded me that Mr A failed to take reasonable care, so I don't think there's been a qualifying misrepresentation. So, I don't think it was fair and reasonable for LV to apply the remedies set out in CIDRA.

I've thought about a fair way to resolve the complaint. I think LV should retroactively reinstate Mr A's policy and pay the claim. It should add 8% simple interest per year to the settlement amount, from the date it made its original offer to the date it settles the complaint, to recognise that Mr A has been out of pocket. As a service we have relatively recently changed our approach to valuing motor vehicles. We have guidance available on our website. I make no comment on the market value of Mr A's car. If he's unhappy with the valuation LV reaches, he'll need to raise this as a separate complaint.

I appreciate LV has said it doesn't have the facility to reinstate policies. But it still needs to put Mr A back in the position he would've been in had the policy not been voided. I would expect LV to amend its records to remove the voidance and show that the policy completed its term. This remedy is in line with our published guidance for complaints like this.

Mr A has explained the considerable stress that the voidance and the declined claim have caused him. He says this has affected his insurance premiums. He's also shown that he is an active member in his local community, and this vehicle, because of its specification, was a key part of this. Being unable to replace it has caused him significant inconvenience and disappointment. Our investigator recommended LV pay £500, and I think that's fair to recognise what's happened. So that is what I award.

Putting things right

To resolve this complaint, LV must:

1. Reinstate the policy,
2. Pay the claim in line with the remaining policy terms,

3. Add 8% simple yearly interest* to any cash amount payable under (2) above, from the date of LV's original settlement offer to the date LV settles the complaint, and
4. Pay Mr A £500 for distress and inconvenience.

*If LV considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons set out above, I uphold Mr A's complaint and direct Liverpool Victoria Insurance Company Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 September 2024.

Chris Woolaway
Ombudsman