

The complaint

Mr R complains that when he made a claim on his motor insurance policy Liverpool Victoria Insurance Company Limited declined his claim and voided his policy from inception.

What happened

On 1 December 2023 Mr R's vehicle was involved in an accident. He submitted a claim to LV who arranged for his vehicle to be taken to a local garage who provided him with a small courtesy car. Mr R was unhappy about the size of the courtesy car and the delay in arranging repairs.

On 12 December 2023 Mr R received a call from LV telling him that his claim was being investigated due to Hawke modifications to his vehicle. Mr R says he contested this as he'd not modified the vehicle and he'd checked with the dealership, who'd told him it only had factory modifications which he didn't need to declare.

On 14 December 2023 LV emailed Mr R to advise him that the modifications made to his vehicle weren't a factory option. And had they known his vehicle was modified they wouldn't have offered him cover. So they said his policy wasn't valid, they'd be treating it as if it never existed and they wouldn't be dealing with his claim. They also said they felt he'd recklessly misled them so they wouldn't be returning his premium.

Mr R raised a complaint which LV didn't uphold. They said when he'd taken out his policy online he's been asked whether his vehicle had been modified in any way which included fitting it with optional extras such as changes to the bodywork, engine or wheels. And he'd have seen an explanation of what would count as a modification.

This says: "*A vehicle has been modified or adapted if it's been changed from the manufacturer's standard specification in any way.*" And goes on to say:

"Examples include:

- *Changes to the bodywork, including spoilers and/or body kits*
- *Changes to the suspension, brakes, engine or exhaust system*
- *Cosmetic changes such as alloy wheels, paint, stickers or decals*

And LV said Mr R had answered "No" to this question.

LV said Mr R was aware that his vehicle had modifications, but he'd asked the dealership rather than them whether these needed to be disclosed. And from the online questions he was asked they said it was clear that the modifications needed to be declared. When he received his policy they said he was asked to check that all information was correct and to let them know if anything needed changing.

They were satisfied that in line with the Consumer Insurance (Disclosure & Representation) Act 2012 (CIDRA) he'd been asked clear questions when taking out his policy. And he had a responsibility to take reasonable care to answer the questions accurately and truthfully.

LV said they'd voided his policy in line with CIDRA as he'd made a qualifying misrepresentation and they considered this to be reckless. CIDRA says the following:

“a qualifying misrepresentation is deliberate or reckless if the consumer –

(a)knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and

(b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.”

As Mr R knew about the modifications to his vehicle LV said they considered the misrepresentation to be reckless. And under CIDRA this meant they could avoid the policy and didn't have to refund Mr R's premium.

LV also said that there hadn't been any delay in them dealing with his claim. The accident had happened and been notified on 1 December 2023, their engineer notified them of the modifications on 6 December 2023, they contacted Mr R about the modifications on 12 December 2023 and on 14 December 2023 they notified him that his policy had been voided.

Unhappy with LV's response Mr R complained to our service. Our investigator considered the case and didn't think LV had treated Mr R fairly. She considered what Mr R would have seen online when he arranged his insurance. But said she'd also looked at LV's website to see what information would have been available to Mr R, in relation to what is meant by changed from the manufacturer's standard specification.

She says that the website says:

“Are factory fitted options classed as changes to my car?”

No, factory fitted options aren't classed as changes to manufacturer's standard specification. A change to a manufacturer's standard specification is anything made after the car leaves the factory.”

She said before he took out his policy with LV Mr R had contacted the dealership he purchased the vehicle from and asked, “On our insurance, would we have to list “Full body kit” on modifications?”

The response he received was, “No you wouldn't as this was a factory option at the time of purchase.”

Our investigator felt that Mr R took reasonable steps to answer the question he was asked about modifications correctly, as he'd asked the dealership who sold him the vehicle.

CIDRA requires a consumer to take 'reasonable care' when answering a clear question from an insurer. Our investigator felt Mr R had taken reasonable care when answering the questions he was asked, so there was no 'qualifying misrepresentation'. And because of this she said LV should put him in the position he would've been in had they not voided his policy. So they should deal with his claim in line with the terms and conditions of his policy and remove the cancellation of the policy from his record.

She said LV should do the following:

- Remove any adverse information from Mr R's insurance record in relation to the

cancellation of his policy.

- Reinstatement of his policy and deal with his claim in line with the policy terms and conditions. As he's already had repairs carried out LV should reimburse him for the cost and any associated costs together with 8% simple interest from when the monies were paid until it's returned to Mr R.
- As LV would effectively be settling the claim, it should be recorded as non-fault as it wouldn't be fair to retrospectively determine liability.
- Pay Mr R £500 compensation for the distress and inconvenience caused by the unfair avoidance of his policy and declining his claim.

Our investigator also considered Mr R's complaint about delays during the claims process and issues with the courtesy car. She didn't think 14 days was an unreasonable period for inspection of his vehicle and an outcome being provided on his claim. And said Mr R's policy provided for a "Basic hire car – this is usually a small 3 door hatchback." So she didn't uphold his complaint about delay or the courtesy car.

Mr R was happy with our investigator's opinion, but LV didn't accept it. They said Mr R was aware of that there had been changes to his vehicle and any basic checks would have confirmed the modifications weren't factory fitted. And they didn't understand why he'd asked the dealership, who sold a wide range of vehicles, rather than them, the insurers who were asking the question, or the manufacturers, about the modifications.

LV said they'd have been prepared to accept that the misrepresentation was careless but they didn't accept the complaint being upheld.

Our investigator maintained that the dealership's response to Mr R told him that the modifications were factory fitted at the time of purchase. So she felt that when taking out his policy he'd answered the question he was asked reasonably. And as this was the case there was no misrepresentation under CIDRA either careless or reckless.

The case came to me for decision. I issued my provisional decision on 3 July 2024 and in it I said: -

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm going to deal briefly first with Mr R's complaints about delay and the courtesy car he was provided with after the accident.

The accident happened on 1 December 2023 and by 14 December 2023 LV had completed their indemnity enquiries and provided Mr R with an outcome. So while I understand the intervening period would have been stressful for Mr R, I don't think there was any delay.

And before his claim was declined Mr R was provided with a courtesy car of the size and type provided for in his policy. So I don't think LV did anything wrong here.

What I now need to consider is whether Mr R took reasonable care in answering the question he was asked about modifications to his vehicle when purchasing his policy online.

CIDRA requires an insurer to ask clear questions. Mr R was asked "Has the vehicle been modified in any way?" I'm satisfied that this is a clear question. He'd then have seen the details of what counts as a modification, this is set out in full in the background to this decision. But I think it's worth repeating that this said, "A vehicle has been modified or adapted if it's been changed from the manufacturer's standard specification in any way."

Mr R was clearly aware that his vehicle had been modified. Before he took out his policy with LV Mr R asked the dealership whether he'd have to list "full body kit" on the modifications. They replied, "No you wouldn't as this was a factory option at the time of purchase."

We don't know what enquiries, if any, the dealership made before replying to Mr R's question. The advert for the vehicle makes no reference to any modifications, but the Hawke modifications can clearly be seen in the photographs attached to the advert.

So knowing the vehicle had been modified, I have to decide whether it was reasonable for Mr R to accept what the dealership said about the modifications, that they were a factory option. And consider this in light of the information available to Mr R when purchasing his policy online.

Mr R was purchasing a Land Rover, but the vehicle had "HAWKE" rather than "LAND ROVER" on the bonnet and boot. Despite what he was told by the dealership I think this should have alerted Mr R to it being unlikely that this would have been a factory modification. And a quick internet search would have shown that Hawke are a separate company who manufacture styling kit upgrades for Land Rovers.

I'm persuaded that when Mr R was taking out his policy online he should have made further enquiries, either by contacting LV or the vehicle manufacturer, to check whether his vehicle had modifications which he needed to declare. So I don't think he took reasonable care when he answered the question he was asked about modifications to his vehicle.

I'm satisfied that Mr R made a "qualifying misrepresentation" under CIDRA. As LV have provided evidence to show that had Mr R declared the modifications they wouldn't have offered him cover.

LV have treated the misrepresentation as reckless. They set out the definition of when a qualifying misrepresentation can be treated as reckless when they advised Mr R they were voiding his policy.

I don't think it's fair to say that Mr R made a deliberate or reckless misrepresentation. But I don't think he answered the question he was asked about modifications with reasonable care.

CIDRA s 5 (1) (3) says:

"A qualifying misrepresentation is careless if it is not deliberate or reckless."

I'm satisfied that Mr R made a careless misrepresentation. And in this situation CIDRA says:

"If the insurer would not have entered into the consumer insurance contract on any terms, the insurer may avoid the contract and refuse all claims, but must return the premiums paid."

So while I'm satisfied that LV were entitled to avoid Mr R's policy and decline his claim, I require them to refund his premium payments.

So my provisional decision was that I partially upheld Mr R's complaint.

Both parties have responded to my provisional decision.

LV have said they have nothing further they wish to add.

Mr R doesn't agree that he misled LV in any way. He's said: -

- He has no knowledge of the insurance industry and has only a basic knowledge of what a car is and does.
- He tried to gather all the facts he thought were required and he provided information honestly and in good faith.
- He believes that I've questioned his integrity and been unfair by saying he knew the vehicle was modified and should have made further enquiries.
- If he knew, as I've said, that the vehicle was modified, why would he not have declared this, risking any issues or claims that arose not being covered.
- He asked the dealership whom he thought was an industry specialist for an honest answer and accepted that. So he thinks not doing further research wasn't him avoiding taking reasonable care and saying that it was is a personal attack on his character.
- At what point does the need to make further enquiries stop? If he'd approached the manufacturer and they'd said there were no modifications, would he have been expected to ask more questions?
- He thinks determination to prove he's at fault has outweighed what happened and he's being punished when he acted in nothing but good faith.
- He questions the integrity of our process when my decision is so different from our investigator's opinion.
- If LV should have treated the misrepresentation as careless they've done something wrong which has contributed to dragging out the process further, putting him and his family through stress and worry which is unacceptable.

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.

I understand that Mr R is upset that my decision is different to the opinion reached by our investigator. We have a two-stage process and if either, or both parties, are unhappy with the investigator's opinion they can ask for this to be reviewed. While I've set out in the background to the case our investigator's opinion, I reviewed all the evidence anew and considered the comments from the parties before reaching my provisional decision.

I've now considered the further comments from Mr R about my provisional decision. Having done that I haven't changed my mind about the case.

When I said that Mr R knew his vehicle had been modified, I said this because he'd told us he'd asked the dealership he bought the vehicle from if he needed to declare a 'Full body kit' as a modification. Regardless of the extent of his knowledge of vehicles I think this shows he was aware the vehicle had been modified in some way.

I accept that he asked the dealership if the vehicle had been modified and was told it had factory fitted modifications which he didn't need to declare. But the vehicle had clear 'Hawke' modifications and given the details of what LV considered as modifications, which Mr R would have seen when taking out his policy online, I'm satisfied that despite what the dealership told him, at this point it would have been reasonable him to make further enquiries. Had he contacted LV I'm persuaded they would have told him his vehicle was modified and they couldn't provide him with cover.

I have to look at this complaint on the basis of what is fair and reasonable to both parties. I've not said, and I don't believe, that Mr R set out to deliberately mislead LV, but as I think he should have made further enquiries about the modifications to his vehicle I'm satisfied he made a 'careless misrepresentation' under CIDRA. And as a result of this LV were entitled to avoid his policy and decline his claim. But they need to refund his policy premium.

While I understand it's taken some time to reach a final outcome on this case, LV were entitled to request a decision when they weren't happy with our investigator's opinion. Just as Mr R would have been entitled to if he'd been unhappy.

I can't say whether Mr R would have brought his complaint to our service if LV had initially said he'd made a 'careless' rather than a 'reckless' misrepresentation. So I can't comment on whether the resolution of this complaint has been delayed.

Putting things right

As I'm satisfied that Mr R made a 'careless' rather than a 'reckless' misrepresentation when he purchased his policy, I require LV to refund his policy premium payments and pay 8% simple interest on the sum refunded from the date the money was paid until the payment is returned to Mr R.

My final decision

For the reasons set out above and in my provisional decision my final decision is that I partially uphold Mr R complaint about Liverpool Victoria Insurance Company Limited and I require they to take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 August 2024.

Patricia O'Leary
Ombudsman