DRN-5022673

The complaint

Mr P has complained about his van insurer Liverpool Victoria Insurance Company Limited (LV) because it has avoided his policy, treated it as though it had never existed, and by association declined his claim for his damaged van.

What happened

Mr P bought a van from a manufacturer dealer in 2020. He noted the van had some non-standard wheels and a bit of unusual styling. The van had paintwork and decals on it that included a graphic which was a play on words of the manufacturer's name. When Mr P called LV it asked him if the van had any modifications, it reports he said "it's got some different wheels on it err and err it has a little bit of styling on it and that but that's the only change to it, oh and it does have a towbar on it but that doesn't really matter does it, and that was all done by [the manufacturer]." LV offered a policy to Mr P, cover began shortly thereafter and renewed in subsequent years.

In 2024 Mr P's van rolled down a hill and was damaged. He made a claim to LV. LV's engineer, noting the decals, said the van had been modified as part of a package offered by the company (not the manufacturer) named in the decals. The engineer said the package of modifications was extensive, including leather seats, spoilers, suspension and various styling changes.

LV reviewed the criteria it uses to decide whether or not to offer cover. It said Mr P should have known that a company other than the manufacturer had modified the van, and that Mr P should have been aware of the package of modifications undertaken by the company. It noted that he had told it, regarding the differences he had identified, that these were done by the manufacturer, which had caused it to think no further enquiries by it were required. It said that if it had been aware of all these modifications by the non-manufacturer company, it wouldn't have offered cover to Mr P. It said it was avoiding the cover and would refund his premiums but wouldn't assist with the claim.

Mr P felt that was unfair. Amongst other points raised to LV, Mr P said that he hadn't known the company were separate to the manufacturer – the play on words used in the decals, which also contained the company name, made him think only of the manufacturer.

When Mr P complained to the Financial Ombudsman Service, our Investigator considered the complaint under what she felt was the relevant legislation – the Insurance Act 2015 (IA). She felt, in that respect, the complaint should be upheld. She made a number of awards – to compensate Mr P for various financial losses he'd reported, as well as for distress and inconvenience. She said the record of the avoidance should also be removed from any internal and external databases, with a letter provided to Mr P explaining the avoidance had been an error.

LV disputed the findings, arguing that the relevant legislation was the Consumer Insurance (Disclosures and Representations) Act 2012 (CIDRA). But it also argued that, under the IA, it

didn't think Mr P had made a fair presentation – so it thought its decision to avoid cover was still fair.

The complaint was referred to me for an Ombudsman's decision. I issued the following initial findings to both parties:

"LV says that CIDRA should apply. It says that if the IA is used, as our Investigator feels is appropriate, Mr P, to have made a fair presentation, should have conducted a search which would have alerted him to the fact modifications had been carried out by someone other than the vehicle manufacturer. So LV thinks, if the IA is applied strictly, a fair presentation wasn't made by Mr P – meaning its avoidance is fair.

I've noted LV's argument regarding the IA. But I'd remind it that this Service does consider matters on a fair and reasonable basis. We will, of course, take relevant legislation into account, but we won't always apply a strict interpretation of it, not if that would create an unfair outcome. I think that is what our Investigator was doing when she explained why she felt Mr P wouldn't have had any good cause to think a search was necessary.

I'd also take the opportunity here to mention that another fair way to view this might be to step away from the more stringent IA and consider the complaint in light of CIDRA. Our Investigator was absolutely correct in explaining to LV that the correct legislation is the IA because Mr P uses his van for business purposes – precluding, on a strict legal interpretation, CIDRA from applying. But this Service can choose to adopt the principles of CIDRA in a complaint like this. We'd do so where applying the IA would create an unfair outcome for a policyholder who, in terms of their expected insurance knowledge, is akin to a consumer – such as a sole trader who owns a van for business purposes, such as Mr P.

Which means that Mr P's complaint could, in theory, be considered in-line with the principles set out by CIDRA. In short, assuming all the other tests were passed, that would mean he would have had to have taken reasonable care to not provide misleading information. I think a determination that Mr P didn't have any good cause to make him think a search was necessary is, effectively, concluding that Mr P took reasonable care when disclosing the information he did know – that there were some modifications – to LV when arranging the insurance cover.

So I think the view presented so far by our Investigator offers a fair and reasonable assessment of the complaint. I think her views issued to date allows for the complaint to be considered in a fair way whilst taking account of the IA, or as generally reflecting the principles of CIDRA. I think that, whichever legislation is used or principles are applied, what I've seen so far suggests LV acted unfairly when it avoided Mr P's policy (treating it as though it had never existed), thereby declining his claim.

I note Mr P now has different vehicles, so he likely feels that the policy does not need reinstating. However, it should really be reinstated to the point of the claim, then marked as cancelled by Mr P at that point, with Mr P paying back to LV the premium it reimbursed to him. It should also be able to deduct a policy excess from any settlements to be made to Mr P – settlements as set out by our Investigator. That way both parties are, as closely as possible, put back into the position they should have been in but for LV's unfair and unreasonable avoidance and decline."

Mr P said he was happy with that – as long as the Investigator's recommendation for the avoidance to be removed was still included.

LV said it disagreed with the findings. LV said, whichever legislation is referenced it thinks "a reasonable customer should have and would have known about the changes on this vehicle

and should have declared them". But also, focussing on the IA, LV said given the decals clearly visible on the vehicle – Mr P "ought to have known and conducted a reasonable search of anything."

The complaint was referred back to me for further review.

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, including LV's reply to my initial findings, I find I'm still not persuaded that LV acted fairly and reasonably here. I still think, whichever way this is considered, Mr P did enough to put LV on notice about modifications this vehicle had which might have impacted its decision on cover.

In responding to my initial findings, LV hasn't said much about CIDRA. Its comment in that respect seems limited to 'a reasonable person should have known'. But I'm not convinced by that statement. I have to consider, in relation to applying the principles of CIDRA, whether Mr P took reasonable care in giving the answer he did. He's explained why, with the play on words detailed in the decals, and because he was buying the van (albeit second hand) from the manufacturer dealer, he wasn't triggered by sight of the other company's name, to think someone other than the manufacturer had been involved with this vehicle. I'm satisfied that explanation has a certain sense of logic to it – it feels like what might reasonably happen when someone is looking at buying something like a vehicle. I think the play on words appearing as part of the decals here – which is a commonly used term or short-hand used by the nation in respect of this manufacturer – caused a reasonable association to form in Mr P's mind, meaning the potential significance of the company name was diminished. I think that would likely have been the same for any reasonable consumer.

Turning to LV's brief comment on the IA, I understand it thinks Mr P didn't make a fair presentation. It's focus in that respect has been on whether Mr P 'ought to have known' about the separate company and its package of modifications. Under the IA, what a person 'ought to have known' includes anything they could have found out by completing a reasonable search for available data.

As I noted initially, our Investigator felt that Mr P hadn't had reasonable cause to conduct any searches. In that respect I'd refer back to what I've set out above – that Mr P only really noticed the play on words part of the decals. I'm not persuaded that, searching that data, would have likely drawn a line for him between the modifications he'd noted and the non-manufacturer company also named (but not really noticed) on the decals.

In the background of all of this of course is the fact that Mr P was not entirely silent with LV about the modifications. He did tell it of some which he had noticed. And the IA says that a commercial customer should tell the insurer what they know, ought to know **or** (my emphasis) give the insurer enough detail to put it on notice that it needs to make further enquiries about potentially material circumstances.

Here, Mr P said there were "some styling" differences, albeit he also said they'd been done by the manufacturer. I note that there are a number of what I'd think of as 'styling' points in LV's underwriting criteria that are important for it when considering whether or not to offer cover. Effectively, for each modification LV applies points and if certain totals of points are reached, those totals will dictate what it does. So I think that with Mr P telling LV that there were 'some' styling modifications, and with styling matters being an important factor in LV's decision making, as explained here, that was enough to put it on notice to make further

enquiries. LV didn't though – rather it seems it made an early decision to not make further enquiries because Mr P seemed satisfied these were manufacturer changes. That choice though doesn't change the fact that Mr P, in my view, gave it enough information to put it on notice about potential detail material to its decision on cover.

Putting things right

Having reviewed everything again, I'm still satisfied that LV acted unfairly and unreasonably when it avoided Mr P's policy and refused to deal with his claim. To make up for its unfair actions it needs to reinstate the policy, marking it as cancelled by Mr P as at the date of the claim. Mr P will need to reimburse its premium refund made previously, but if any money is owing to him for premium payments made post the date of claim, LV will have to reimburse Mr P. The record of the avoidance should be removed from any internal and external databases, with LV providing a letter explaining the avoidance was an error on its part.

To mitigate the situation Mr P found himself in due to LV's unfair avoidance, Mr P bought replacements for the van before subsequently repairing it and selling it. None of that can be undone at this stage, I can only fairly require LV to make Mr P reasonably whole again. As our Investigator explained, that wouldn't include a direction for LV to reimburse Mr P's outlay for his new vehicles (which collectively, he says, carry out the same functions as the damaged van used to). After all he now has the benefit of owning those vehicles. Whilst the cost of insuring them will likely be different from the insurance cost for the damaged van, if the price of those covers is more because of the avoidance, LV should be paying Mr P the difference in cost, plus interest*.

Mr P says he repaired his van minimally. If he can show those costs to LV, it should reimburse them, plus interest*, but less the relevant policy excess. He says that because the van was only minimally repaired, that affected its sale value. If he can demonstrate that loss to LV, it should consider it, compensating Mr P for any likely difference in value caused by the minimal repairs.

Prior to repairing and selling the van, the van had to be stored for a time, costing £400, and then moved, at a cost of £200. I think it's reasonable to require LV to reimburse costs evidenced by Mr P, plus interest*.

Mr P, at one time, hired a van, for a week, at a cost of £400. This was cover LV would have provided but for the avoidance. I think LV should reimburse Mr P's costs for hire subject to evidence of his outlay, plus interest*.

I'm satisfied LV should also pay Mr P compensation for the upset caused. I know Mr P has been worried about this matter, that he had to take the decision to fix the van, sell it on and replace it. I'm satisfied that £300 compensation is fair and reasonable in the circumstances.

*Interest is at a rate of 8% simple per year and paid against the items specified. It should be applied to each relevant amount from the date of any overpayment by Mr P (for premiums) or the date Mr P made payments for repair, storing, moving and hire until settlement is made. HM Revenue & Customs may require LV to take off tax from this interest. If asked, it must give Mr P a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Liverpool Victoria Insurance Company Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or

reject my decision before 16 December 2024.

Fiona Robinson
Ombudsman