

The complaint

Mr S is unhappy Liverpool Victoria Insurance Company Limited (LV) have avoided his motor insurance policy and declined his claim.

What happened

In January 2024 Mr S was unfortunately involved in a car accident which he reported to his insurer LV. Whilst dealing with Mr S's claim LV said it became aware there were modifications on Mr S's vehicle which it hadn't been told about. It said Mr S's vehicle had nonstandard wing mirrors, tinted windows and aftermarket lights which were all modifications. LV said had it been made aware of these modifications it wouldn't have offered Mr S a policy. It said this entitled it to avoid Mr S's policy and decline his claim.

Mr S didn't think this was reasonable and so referred his complaint to this Service. Our investigator initially upheld Mr S's complaint. She said she thought the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) applied but she didn't think Mr S had failed to take reasonable care when purchasing his insurance policy. She said she didn't think Mr S would have been aware his vehicle had been modified and so it wasn't reasonable for LV to avoid Mr S's policy. She thought LV should remove any record of the avoidance, pay Mr S the amount it cost to repair his vehicle, including 8% per year simple interest and pay Mr S £300 compensation.

Mr S accepted our investigator's view but LV disagreed with it. LV provided a call recording which it said showed Mr S was aware of modifications to his vehicle.

Our investigator considered this and issued a further view. She said she thought Mr S had failed to take reasonable care when he told LV his vehicle didn't have any modifications. She said LV had demonstrated it wouldn't have offered Mr S a policy had it been aware of the modifications and so it was entitled to avoid Mr S's policy and decline his claim. She also said it was fair for LV to hold the premium Mr S had paid to offset against any third party claim it may receive and if settled within the premium amount, provide Mr S with a refund.

Mr S disagreed with our investigator. He said he hadn't made any modifications to his vehicle and he had been caused confusion due to a combination of personal factors and his inexperience in dealing with a claim.

As Mr S disagreed with our investigator, the complaint has been passed to me to decide.

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 want to acknowledge I have summarised Mr S's complaint in less detail than he has presented it. I've not commented on every point he has raised. Instead I have focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy by this, but it simply reflects the informal nature of this Service. I assure Mr S and LV I have

considered everything that's been provided.

The relevant law in this case is 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 that 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 think Mr S failed to take reasonable care when he answered a question about modifications when he purchased his insurance policy.

I've looked at the question Mr S was asked when he purchased the policy. Mr S was asked:

'Does the car have any modifications?'

There was an option for Mr S to click a heading called, *'What are modifications?'*. Had he done so it stated:

'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.'

LV have said Mr S's vehicle has nonstandard wing mirrors, tinted windows and aftermarket lights which were all modifications. Based on the evidence provided by its engineers I think it's fair to say these are changes made to the vehicle after manufacture and so are considered modifications.

Mr S answered this question as, 'no'. He said he wasn't aware of any modifications on the vehicle, and it wasn't something he was told when he bought it. I've therefore considered whether Mr S failed to take reasonable care when answering this question.

I've listened to a call recording Mr S had with LV when he called it to make it aware of further damage to his vehicle. During this call Mr S said the headlights were different bulbs which he had installed himself. He said he paid extra as they were aftermarket. Mr S has since said this wasn't accurate as he hadn't installed anything himself. He said he was confused at this time given personal circumstances, his own learning difficulties and his inexperience of the claim process. He has also provided photos which he says are from before he purchased the vehicle which show the modifications, including the aftermarket lights, were present on the vehicle before he purchased it.

Based on the evidence provided I'm persuaded Mr S was aware his vehicle had aftermarket lights when he took out his insurance policy. I accept Mr S's testimony that he misspoke when he said he installed the lights himself, and the photographs he has provided which he says are from before he purchased the vehicle suggest he purchased the vehicle with the modifications already in place.

However the call Mr S had with LV makes clear Mr S was aware his vehicle had aftermarket lights on, and he said he had paid extra for this. This information was provided by Mr S

unprompted by LV. Based on this I'm persuaded Mr S was aware his vehicle had aftermarket lights when he purchased his insurance policy. As I think Mr S was aware of this modification I think he failed to take reasonable care when answering the question about modifications.

LV have said Mr S should have also told it about the vehicle's tinted windows and nonstandard wingmirrors. I appreciate Mr S has said he wasn't aware of these modifications when he purchased the vehicle, however given Mr S was aware of the aftermarket lights, on balance I think it's likely he was also aware of the other modifications to his vehicle.

In any event, LV have provided its underwriting criteria to show that if any modifications had been declared to it, it wouldn't have offered a policy at all. As I'm satisfied Mr S should have declared the aftermarket lights, whether Mr S also declared the other modifications doesn't change the action LV would have taken.

LV has said it believes the misrepresentation to be careless rather than deliberate or reckless. I think this is reasonable. As I'm satisfied Mr S has made a qualifying misrepresentation and this misrepresentation was careless, I've looked at the actions LV can take in accordance with CIDRA.

As LV have shown it wouldn't have offered a policy at all, I'm satisfied it was entitled to avoid Mr S's policy in accordance with CIDRA. And as this means that – in effect – his policy never existed, LV doesn't have to deal with his claim. As it has deemed the misrepresentation as careless it should return any premium Mr S has paid towards the policy.

However CIDRA does also entitle LV to recover any costs it's paid towards any third party claims. LV has said it will deduct the premium from any cost it has paid towards a third party claim before it seeks to recover these costs. I think this is reasonable in the circumstances of this complaint.

I know Mr S has been through a very difficult time, and I naturally empathise with this. However based on the evidence provided I'm satisfied LV have fairly applied CIDRA and so don't require it to take any further action in relation to Mr S's complaint.

My final decision

For the reasons I've outlined above, I don't uphold Mr S's complaint against Liverpool Victoria Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 November 2024.

Andrew Clarke
Ombudsman