DRN-5140302

The complaint

Mrs J and Mr C complain that Liverpool Victoria Insurance Company Limited (LV) avoided (treated it as if it never existed) their motor insurance policy, refused to pay their claim for the loss of their car and is seeking repayment of its outlay for the other driver's claim. Mr C is a named driver on Mrs J's policy and represents her in this matter.

What happened

Mrs J took out a motor insurance policy with LV through an online price comparison site. When her car was damaged in an accident, she tried to claim on her policy.

LV declined her claim, avoided her policy and kept the premiums she'd already paid to offset its costs. When Mr C complained, it said she'd answered the question she'd been asked about whether her car was modified incorrectly. And that it considered this to be a careless qualifying misrepresentation, which entitled it to avoid the policy and refuse the claim.

our investigator's view

Mr C brought the complaint to us, and our Investigator thought it should be upheld. He thought Mrs J and Mr C didn't know that a detachable towbar added to the car was a modification. And he thought the towbar hadn't been attached to the car at the time of the accident. So he thought the impact of LV's decision on Mrs J and Mr C had been disproportionate.

He said LV should reinstate Mrs J's policy and settle the claim, with interest. And he thought it should pay Mrs J £400 compensation for the trouble and upset caused by its unfair decision.

LV replied asking for an Ombudsman's review, so the complaint has come to me for a final decision. It said Mr C had added the towbar to the car, he said it was detachable, but he didn't say it wasn't present at the time of the accident. It also said Mr C wanted to include its value in his total loss settlement.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mrs J and to LV on 25 October 2024. I summarise my findings:

I was sorry to hear of the impact LV's decision has had on Mrs J's health. I could understand that this must be a very stressful experience for her, and Mr C and they must be worried about the potential financial loss they face.

LV said it had avoided their policy and declined their claim due to a qualifying misrepresentation. So I was satisfied that the relevant law in this case was The Consumer Insurance (Disclosure and Misrepresentation) 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it is entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

LV thought Mrs J failed to take reasonable care not to make a misrepresentation when she stated in her application via a comparison site that her car had no modifications. And I looked at the question she was asked when she completed the application and agree she failed to take reasonable care.

This is because she was asked:

"Has the car been modified in any way?

What does this mean?

If you or a previous owner has made a change from the manufacturer original specification, such as alloy wheels, air conditioning, bodywork, exhaust system, suspension or tinted windows, add it here.

If you're unsure if your car's been modified, check its previous history to find out."

And I thought this was a clear question asked by LV through the comparison site Mrs J used.

Mrs J answered "No". But Mr C had paid for a tow bar to be fitted to the car. This was in two parts, with one part fitted to the car and its electrics, and the other part detachable. I thought this was clearly a change from the manufacturer's original specification. If Mrs J had selected "Yes", she would have been taken to a list of modifications that included a towbar.

And in Mrs J's Welcome Pack, it stated under Car Details:

"Hasn't been changed from the manufacturers standard specification".

But Mrs J didn't correct this. And I thought this meant Mrs J failed to take reasonable care not to make a misrepresentation when she said the car had no modifications. I also thought Mr C was reasonably aware that the towbar was a modification as he said he'd checked this with a previous insurer. And even though part of the towbar was detachable, another part was fitted to his car. And so I thought Mrs J should have answered "Yes" to the question.

LV provided evidence from its underwriting guide which showed that if Mrs J had not made this misrepresentation it would not have offered cover at all. This meant I was satisfied that Mrs J's misrepresentation was a qualifying one under CIDRA.

I also thought Mrs J's misrepresentation was a careless misrepresentation. This is because LV hadn't provided evidence to show that Mrs J deliberately set out to mislead it. Mr C said the previous insurer had told him that the towbar didn't make a difference to the cover, and he presumed this was the same with LV. And so I thought the misrepresentation was careless.

Mr J said the towbar attachment wasn't fitted at the time of the accident. But he didn't tell LV this when he discussed the car's valuation with LV. However, this didn't change the fact that the car had been modified from the manufacturer's original specification after he had

purchased it. And Mr C was sufficiently aware of this to ask LV for an increase in the valuation of his car.

As I've said above, If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

LV had shown that if Mrs J had disclosed the towbar, then it wouldn't have offered cover at all. Therefore, I was satisfied LV was entitled to avoid Mrs J's policy in accordance with CIDRA. And, as this meant that – in effect – her policy never existed, LV did not have to deal with her claim following the loss of her car. And it was entitled to recover its outlay for the claim from Mrs J. But it must return her premiums or offset these against its outlay.

I could understand that this seemed to be a harsh and disproportionate outcome for a careless error. But it was the remedy available to LV under CIDRA for a careless qualifying misrepresentation where it wouldn't have offered cover at all if the modification had been disclosed. And so I was satisfied LV was entitled by CIDRA to apply the remedy.

And – as CIDRA reflected our long-established approach to misrepresentation cases, I thought allowing LV to rely on it to avoid Mrs J's policy and decline her claim produced the fair and reasonable outcome in this complaint. And, as LV hadn't made an error, I didn't require it to pay Mrs J any compensation.

Subject to any further representations from Mrs J and LV, my provisional decision was that I intended to not uphold this complaint.

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.

LV didn't make any comments following my provisional decision. Mr C replied disagreeing with me on a number of points. And I'll summarise and respond to these in turn.

Mr C said the consumer journey didn't give any indication that the towbar was a modification because it wasn't listed. I agree that it wasn't included in the comparison site's list of examples of possible modifications. But I wouldn't expect all possible modifications to be listed there. I think the definition of a modification as "*a change from the manufacturer original specification"* is clear. And if Mrs J had selected "Yes" she would have been provided with a list including towbars to specify the modification made.

Mr C said his previous insurer, and other insurers used by friends, didn't care about the towbar. But it's not for me to tell LV what risks it should or shouldn't cover, that's its commercial decision. And because another insurer covered towbars, this doesn't mean that LV should have done the same.

Mr C said the company that fitted the towbar said it complied with the manufacturer's specification. But this doesn't change the fact that the towbar was added after the car was bought and so it was a change from the manufacturer's original specification.

Mr C said they didn't intend to mislead LV. And I agree with him that the misrepresentation wasn't intentional. But CIDRA doesn't provide for "innocent" misrepresentations, so I think LV correctly considered this to be careless.

Mr C said that LV hadn't clearly stated on its website that it didn't cover modifications. But the policy Mrs J bought didn't cover modifications. It's clearly set out in the Welcome Pack that the car hasn't been modified from the manufacturer's specification. And I'm satisfied that LV has provided evidence from its underwriting guide to show that modifications aren't acceptable for the policy.

Mr C said the detachable part of the towbar wasn't on the car at the time of the accident. But the car had still been changed from the manufacturer's original specification in order to attach the fitting and the electrics.

Mr C said the consequences of the avoidance of his policy were colossal for his family. I can understand that this will have a severe financial impact for them, and I am sorry to hear about this and the worry and stress this matter has caused.

But, as I've explained above, Mrs J made a qualifying misrepresentation that was careless. And under CIDRA the remedy available to LV when it wouldn't have offered cover at all without the misrepresentation is to avoid the policy and not deal with the claim. And so I can't say that LV has acted unfairly or unreasonably. But it must either refund the premiums paid or offset these against its outlay.

My final decision

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs J to accept or reject my decision before 13 December 2024.

Phillip Berechree
Ombudsman