DRN-5227337

The complaint

Mr M complains that Liverpool Victoria Insurance Company Limited trading as FLOW ("LV") unfairly treated his motor insurance policy as void and declined his claim.

What happened

The subject matter of the insurance, the claim and the complaint is a cabriolet car, made by a premium-brand car-maker and first registered in 2012.

Mr M acquired the car in May 2022.

For the year from early June 2022, Mr M used a price comparison website (or "aggregator") to get a quote. He insured the car on a comprehensive policy with LV. The policy covered him as main driver and a younger relative as a named driver.

For the year from June 2023, Mr M and LV renewed the policy.

Unfortunately, Mr M reported that on about 18 October 2023, the named driver and a third party had been involved in an accident that had damaged the car. Mr M made a claim to LV. LV arranged recovery and storage of the damaged car.

LV assessed the damaged car. By a letter dated 15 November 2023, LV said that the car had the following modifications:

- tinted rear windows
- rear spoiler
- rear splitter underneath the bumper

LV said that Mr M had failed to declare the modifications, so it was treating the policy as void and declining the claim. As it said Mr M had been reckless, LV said it would keep the premium he had paid. LV said Mr M was liable to pay the recovery and storage costs.

Mr M consulted solicitors. He complained to LV that it wasn't treating him fairly.

By a final response dated 15 February 2024, LV turned down the complaint. It referred to Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). LV mentioned additional modifications including the following:

- side skirts
- front spoiler
- privacy foil
- alloy wheels
- wing mirrors

Mr M brought his complaint to us in early August 2024.

Our investigator recommended in early November 2024 that the complaint should be upheld. He didn't think that Mr M had failed to take reasonable care when answering the question about modifications to his vehicle. He didn't think that LV treated Mr M fairly when it voided the policy and declined his claim. The investigator recommended that LV should:

1. reinstate Mr M's policy; and

2. reconsider the claim against the remaining terms; and

3. should this result in the claim being settled, add 8% simple interest to any settlement paid to Mr M from the date of the claim through to the date eventually settled; and

4. reimburse Mr M for the recovery and storage costs. Again, adding 8% simple interest from the date Mr M paid this, through to the date it's reimbursed; and

5. remove the cancellation/voidance from any internal or external databases; and

6. provide Mr M with written confirmation the cancellation/voidance was an error. Mr M may be able to use this to ask his current insurer to re-calculate his premiums; and

7. pay Mr M £350.00 compensation in recognition of the distress and inconvenience caused.

Mr M provided further information that he'd successfully claimed against the third party for damage to the car and £210.66 for the recovery and storage costs.

In mid-November 2024, the investigator changed his recommendation. He still recommended that the complaint should be upheld. He still didn't think LV had acted fairly. But he thought that Mr M was no longer out of pocket for recovery and storage and didn't need the policy to be reinstated. The investigator recommended that LV should:

1. reimburse the premium paid by Mr M, less a proportional deduction for the time up until the claim, and any applicable cancellation fees; and

2. remove the cancellation/voidance from any internal or external databases; and

3. provide Mr M with written confirmation the cancellation/voidance was an error; and

4. pay Mr M £350.00 compensation in recognition of the distress and inconvenience caused.

Mr M accepted the investigator's changed recommendation.

LV disagreed with the investigator's changed recommendation. It asked for an ombudsman to review the complaint. It says, in summary, that:

- Images of the car when it was advertised in May 2022 show the car without the spoiler, side skirts or tinted windows. They also show different wheels.

- Its engineering manager listed the non-standard items.

- It is unreasonable to assume the garage would have fitted all these modifications.

- It is more likely that Mr M applied all the modifications in his two years of owning the vehicle.

- The cosmetic differences between a vehicle of standard specification were noticeable.

- A 'reasonable consumer' would know the vehicle has modifications, as it's clear in all images.

- The engineer confirms that the rear spoiler was £283.34, front spoiler £247.50 and side skirts at £195.92 each, all plus VAT, this would mean this vehicle would have been 17.3% higher than a standard value.

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.

CIDRA imposes a duty on a consumer to take reasonable care not to make a misrepresentation when taking out or varying an insurance policy. If the consumer doesn't comply with that duty and makes a misrepresentation that is "qualifying", then CIDRA gives the insurer certain remedies.

A misrepresentation is qualifying if it is careless and it makes certain differences to the insurer. If the misrepresentation makes the difference that the insurer wouldn't otherwise have offered cover, then the remedies include treating the policy as void and declining to pay any claim.

Also, if the misrepresentation was reckless or deliberate, then the remedies include treating the policy as void and declining to pay any claim – and not refunding the premium.

Online advert photographs show the car without a rear spoiler or tinted rear windows or side skirts. The photographs show a previous cherished plate. From DVLA records, I accept that on about 22 April 2022, the registered keeper changed the car's registration number from that cherished plate to a "12" plate. So I find it likely that the photographs pre-date 22 April 2022.

I accept that Mr M didn't see the online advert. Rather I find it likely that a dealer bought the car. From what Mr M has said, I find that the dealer added modifications including the rear spoiler, tinted rear windows and side skirts. I say that because I accept Mr M's consistent statements that he bought the car with those features.

Mr M bought the car from the dealer on 23 May 2022. The invoice didn't mention modifications, but the price was £9,000.00 for the car as it was.

The comparison website asked Mr M questions including one as follows:

> "*Has the car been modified in any way?*"

That was accompanied by an explanation as follows:

> "*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*."

So I accept that the question was clear enough.

Mr M answered that question in the negative. I don't consider that was correct. I consider that the car did have modifications. So Mr M made a misrepresentation.

On about 12 June 2022, Mr M told LV he had changed the registration number of the car to a cherished number (that included some of the letters in the name of the named driver). I don't regard that change as a variation of the policy within the meaning in CIDRA.

I consider that the renewal from June 2023 was a variation of the policy within the meaning in CIDRA. LV asked Mr M to confirm or amend the particulars previously given in 2022 and recorded in the renewal documents. Mr M didn't respond in July 2023. So I consider that he was repeating that the car had no modifications. That wasn't correct at that time. So Mr M made a misrepresentation.

I accept LV's evidence that if Mr M had declared the modifications, it wouldn't have offered the policy.

But the key question is whether Mr M took reasonable care not to make a misrepresentation.

I accept that Mr M didn't know that the car had modifications when he bought it or when he took out the policy or when he renewed the policy. And LV hasn't provided enough evidence to persuade me that – as a reasonable consumer – Mr M ought reasonably to have known that the car had modifications.

I don't think that it helps LV's case that its engineer didn't identify some of the modifications (such as side skirts, front spoiler, rear bumper, privacy foil, alloy wheels and wing mirrors) that its engineering manager later identified.

So LV has fallen short of providing enough evidence to persuade me that Mr M was in breach of his duty to take reasonable care not to make a misrepresentation when taking our or varying the policy.

The accident and the need to make a claim were, in my view, bound to cause Mr M distress and inconvenience. But LV had an obligation to deal with his claim fairly and promptly.

I don't consider that Mr M had made a qualifying misrepresentation. So I consider that LV treated Mr M unfairly by treating the policy as void, declining his claim, yet keeping the premium.

Putting things right

We don't expect consumers to incur legal costs before bringing a complaint to us. So I don't find it fair and reasonable to direct LV to reimburse Mr M's legal costs.

Mr M has said that LV caused him to lose work opportunities. However, I consider that he has fallen short of providing enough detail and evidence to persuade me that it would be fair and reasonable to direct LV to compensate him for such loss.

From what I've seen, LV was responsible for recovery and storage costs. Mr M paid or reimbursed those costs and then recovered them from the third party. Mr M has said that he successfully claimed against the third party for that and for the damage to his car. So there is no need for LV to reconsider his claim.

One effect of my findings is that Mr M had the benefit of LV cover up to the date of the accident. LV has not settled his claim. So I consider that LV should treat the policy as cancelled with effect from that date and refund the proportion of the premium that Mr M had paid for the period after that date, less any cancellation fee.

As I've found that LV acted unfairly, I find it fair and reasonable to direct LV to remove from any internal and external database any record that the policy was void. I find it fair and reasonable to direct LV to write to Mr M saying that it unfairly treated his policy as void and declined his claim.

I don't doubt that – by a decision I've found unfair – LV caused Mr M extra distress and inconvenience at an already difficult time for him. That included telling him that he'd made a reckless misrepresentation. It also included putting him to the extra effort of dealing with his claim against the third party. So I conclude that £350.00 is fair and reasonable and in line with our published guidance for compensation for distress and inconvenience.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Liverpool Victoria Insurance Company Limited trading as FLOW to:

1. treat the policy as cancelled with effect from 18 October 2023 and refund the proportion of the premium that Mr M had paid for the period after that date, less any cancellation fee; and

2. remove from any internal and external database any record that the policy was void; and

3. write to Mr M saying that it unfairly treated his policy as void and declined his claim; and

4. pay Mr M £350.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 February 2025.
Christopher Gilbert
Ombudsman