

The complaint

Mrs B complains Liverpool Victoria Insurance Company Limited (LV) unfairly avoided her motor insurance policy (treated it like it never existed), refused to pay her claim and kept her policy premiums.

What happened

Mrs B took out a motor insurance policy with LV through an online price comparison website. When her car was damaged she tried to make a claim on her policy.

LV said she'd answered the question it asked about modifications to her car incorrectly. And it considered this to be a deliberate qualifying misrepresentation, which entitled it to avoid her policy, decline her claim because of this and keep the premiums she'd already paid.

Mrs B brought her complaint to us, and our investigator thought it should be upheld. They agreed there had been a qualifying misrepresentation. But didn't think this was deliberate. They believed it was careless. They thought LV were entitled to avoid Mrs B's policy and decline her claim, but it should return the premiums she'd paid to her.

LV doesn't agree with the investigator and has asked for an ombudsman's decision. It maintained it was a reckless misrepresentation because its question about modifications was clear.

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.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) 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. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

LV thinks Mrs B failed to take reasonable care not to make a misrepresentation when she stated in her application via an online comparison site that her car wasn't modified.

I've looked at the question asked when Mrs B initially took out her policy and it says;
"Has the car been modified in any way?"

A vehicle is considered modified if it has been changed in any way since it was first supplied by the vehicle manufacturer. This would include: Changes to the body work, suspension or brakes, cosmetic changes and changes to the engine management system or exhaust system. If you are unsure whether changes to the vehicle are classed as a modification, please check with your chosen provider before purchasing."

Mrs B answered no to this question. This was technically answered correctly at this point as the vinyl wrap had not yet been applied. However it was booked in at this point and applied in February 2023, shortly after delivery. She said she had not disclosed this because it was added to protect the paint and it wasn't performance related and didn't alter the car in any way.

When her policy renewed in December 2023, new policy documents were sent to Mrs B which again detailed no modifications to the car.

LV has provided evidence by way of its underwriting criteria that it would not have offered a policy if it had been made aware of the vinyl wrap bodywork modification.

This means I'm satisfied Mrs B's misrepresentation was a qualifying one.

LV has said Mrs B's misrepresentation was reckless because the question asked was clear and detailed. It said she cannot reasonably claim she thought only performance enhancing modifications needed to be disclosed. And she did not care whether or not her statement was untrue or misleading. Therefore, LV avoided Mrs B's policy, kept the premiums paid and didn't deal with her claim.

Mrs B said she hadn't read the question properly and didn't realise she needed to disclose the clear wrap on the vehicle. I accept she made the wrong assumption, but I haven't seen any evidence to show she knew the wrap was relevant as a modification and she didn't care she had answered the question incorrectly. In addition, I don't think it is likely she would have made a claim for damage to the wrap to her car bodywork if she had deliberately or recklessly misrepresented that the car was not modified.

Therefore I don't agree that Mrs B's misrepresentation was reckless. I'm satisfied the misrepresentation was careless.

As I'm satisfied Mrs B's misrepresentation should be treated as careless I've looked at the actions LV can take in accordance with CIDRA. Because it would not have offered cover it can;

- Avoid the policy from the point of misrepresentation. Often from the start, but not always (mid-term).
- Return any unused premiums the consumer paid.
- Treat the policy as though it never existed from the point of avoidance and not deal with any claims.
- Look to recover any cost's it's paid to a third party on any claim after the misrepresentation.

Therefore, although I agree that Accredited Insurance fairly avoided Mrs B's policy and didn't deal with her claim, I require it to refund the policy premiums for the term of cover. I understand that a partial refund has already been made to her and this amount should be deducted from the full refund due.

I realise this matter has caused Mrs B a great deal of distress, but as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Accredited Insurance to rely on it to avoid her policy produces the fair and reasonable outcome in this complaint.

My final decision

For the reasons set out above, I've decided to uphold Mrs B's complaint.

I require Liverpool Victoria Insurance Company Limited to return the policy premiums from the policy starting December 2023 to Mrs B, less any amount already refunded.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 20 February 2025.

Sally-Ann Harding
Ombudsman