

The complaint

Mr M – on behalf of P (a limited company)– is complaining that One Insurance Limited (OIL) avoided P's commercial motor insurance policy and in turn said it wouldn't cover his claim for the theft of P's vehicle.

What happened

In March 2024 P's vehicle was stolen so Mr M contacted OIL to claim for the loss through P's motor insurance policy. OIL initially said it would pay the vehicle's market value, less P's excess, to settle the claim. But it later contacted Mr M to say it had become aware of some modifications to the vehicle. It said Mr M hadn't told it about these modifications when he took out the insurance policy and it said it wouldn't have insured the vehicle had it known about them. So it avoided P's insurance policy and, in turn, said there was no longer cover for the theft.

Mr M didn't think this was fair. He said he didn't do any of the modifications and they were done before he bought the vehicle. And he highlighted that the alloy wheels OIL referred to were manufacturer branded. So he said he just thought the vehicle was a high specification. He also said OIL only became aware of them because he told them about the extras when discussing the valuation.

OIL didn't change its decision, so Mr M referred P's complaint to this Service.

Our Investigator didn't uphold this complaint. He said OIL had provided a telephone call where Mr M had said he'd known the vehicle was modified. And he said OIL had shown it wouldn't have provided the insurance policy had he told them about the modifications. So he didn't think OIL was being unfair in avoiding the policy.

Mr M didn't agree with the Investigator and raised the following:

- He reiterated OIL only became aware of the modifications because he told them about it. He queried why he would tell it about the modifications as part of the claim if he was looking to mislead them.
- He maintained he didn't know he had to tell them about the modifications, reiterating that he didn't add them to the vehicle.
- He said he spoke with OIL and discussed the bull bar (another one of the modifications) and the call handler said it wouldn't make a difference.
- He recently did a quote online for the vehicle, this time including the modifications, and said OIL said it would insure the vehicle. So he disputed it wouldn't insure him.

As Mr M didn't agree with the Investigator, the complaint's 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've decided to not uphold this complaint and I'll now explain why.

The relevant law in this case is the Insurance Act 2015. This required the policy applicant – in this case Mr M, on behalf of P – to make a fair presentation of the risk to the insurer so that it had enough information to assess the level of risk it was willing to provide and on what terms.

And if the applicant fails to do this, the insurer has certain remedies provided the failure is – what the Insurance Act describes – as a qualifying breach. For it to be a qualifying breach the insurer has to show it would have offered the policy on different terms or not at all if the policyholder hadn't made the breach.

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

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 breach wasn't deliberate or reckless and the insurer would have charged a higher premium if the consumer had made an actual fair presentation of the risk, it will have to consider the claim and settle it proportionately if it accepts it.

OIL has highlighted that the vehicle has had a number of optional extras added, such as:

- Non-standard alloys
- Chrome sports bar behind cab
- Tow bar
- Black leather and microfibre interior
- Non-standard style grill

OIL sets out the information it wants to know about in its statement of fact. In this it asks:

“Has the vehicle been modified or altered from the manufacturer's specification?”

Mr M told OIL it hadn't been modified. And, as I said, it was Mr M's responsibility to tell OIL everything it needed to know. So he has breached his responsibilities in this regard. OIL has provided its underwriting evidence which shows it wouldn't have insured the vehicle had Mr M told it about the modifications. So under the strict application of the Insurance Act, OIL was entitled to avoid the insurance policy. But this Service will always consider what's fair and reasonable. In this case, I've thought about whether Mr M reasonably could have known to disclose the modifications.

I note Mr M's said it wasn't clear he needed to tell OIL about this. But he took the policy out through a broker, so if he doesn't think the broker made it clear what information he needed to tell OIL about, he'll need to raise this with the broker directly.

That said, OIL has provided a telephone call where it called to discuss the modifications with him. The call handler asked if he knew whether there were modifications on the car and he said *“yes of course – it's pretty obvious”*. So I'm satisfied Mr M was aware the car was modified – i.e. more than just some optional extras. It seems Mr M has said he thought he

only had to disclose modifications he'd done. But that's not what OIL asked. It asked for any modifications or alterations from the original manufacturer specification – i.e. not just the ones he'd done.

I'm ultimately satisfied that Mr M was aware the vehicle was modified. So he didn't make a fair presentation of the risk. And, so, it follows that I don't think it was unfair for OIL to say there had been a qualifying breach. I don't dispute that Mr M didn't do this deliberately and neither does OIL. It seems to be a mistake. And OIL also has said it doesn't consider this to be a deliberate or reckless breach.

So, as the qualifying breach wasn't deliberate or reckless, to avoid the insurance policy, OIL has to show it wouldn't have insured P had Mr M made a fair presentation of the risk. As I said above, OIL has provided details of how it assesses risk – including whether it covers modifications or not. I've considered this and I'm satisfied it wouldn't have insured Mr M.

Mr M disputes OIL wouldn't have insured him. He says he recently did an online quote for the vehicle, disclosing the modifications and says OIL provided a quote. But I don't agree. The quote Mr M refers to is provided by the broker but has a different insurer providing the policy. I think this actually supports that OIL wouldn't have insured the vehicle.

I recognise Mr M thinks this is a grossly unfair situation. He says he's saved up for 40 years to buy this car and thinks it's unfair he's losing around £30,000 due to a simple mistake. And I naturally sympathise with the situation he's in. But, at the same time, OIL wouldn't have been covering the risk had he made a fair presentation of the risk. So I can't reasonably require it to pay the claim either. And as I said, the law entitled OIL to take the approach it did.

So, taking everything into consideration, I can't say it was unreasonable for OIL to have avoided P's insurance policy. The effect of avoiding an insurance policy is that it is to be treated as if it never existed. As a result, there is no valid insurance policy to cover P's loss. So it follows that it wasn't unreasonable for OIL to have declined P's claim for the theft of its vehicle.

My final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B – on behalf of P – to accept or reject my decision before 11 March 2025.

Guy Mitchell

Ombudsman