

The complaint

Mr L complains about Liverpool Victoria Insurance Company Limited's (LV) decision to avoid his car insurance policy following a claim he made.

What happened

Mr L held a motor insurance policy underwritten by LV. He made a claim in March 2024 after he was involved in a motor accident. LV say that during its consideration of the claim, it became apparent Mr L had made a misrepresentation when he bought the policy. So, it declined his claim and avoided the policy. When Mr L complained, LV said he'd answered the question he'd been asked about modifications to his car incorrectly. And that it considered this to be a qualifying misrepresentation, which entitled it to avoid the policy and refuse the claim. Mr L remained unhappy and referred a complaint to this Service.

Our Investigator reviewed the complaint and thought it shouldn't be upheld. She thought LV wouldn't have offered the cover without the misrepresentation, so she said LV was entitled to avoid the policy and decline the claim. Mr L disagreed and asked for an Ombudsman to review the complaint.

I issued a provisional decision on Mr M's complaint. This is what I said about what I'd 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'd like to reassure the parties that although I've only summarised the background to this complaint, so not everything that has happened or been argued is set out above, I've read and considered everything that has been provided.

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 must 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, reckless, or careless.

LV thinks Mr L failed to take reasonable care not to make a misrepresentation when he stated in his online application the car had no modifications. I've looked at the questions Mr L was asked when he completed the application. The question relating to modifications says "Does the [make and model of car] have any modifications? The question also included a

help box to provide assistance that said “if you or a previous owner has made a change from the manufacturer’s original specification, such as alloy wheels, air conditioning, bodywork, exhaust system, suspension or tinted windows, add it here.” So, I think the question Mr L was asked was clear and gave adequate guidance on the type of modifications Mr L needed to disclose.

LV says Mr L’s car has a number of modifications, which have been confirmed by the car’s manufacturer. So, as the car manufacturer has confirmed the changes to Mr L’s car are non-standard changes after manufacture, I’m satisfied, on balance, they are modifications. LV has also provided evidence of its underwriting criteria showing if Mr L had disclosed these modifications it wouldn’t have offered him cover- so it considers the misrepresentation to be a qualifying misrepresentation as per CIDRA.

Mr L told LV he completed the application using the information available to him from the car’s logbook and from the individual he bought the car from. Mr L seems to accept he was aware the car wasn’t a ‘standard model’ but he thought it was just one that had numerous extras added to it because of what he was told when he bought it.

I need to consider what a reasonable person in the same set of circumstances would do – i.e. was Mr L’s actions in line with what a reasonable person would have done. It’s not unreasonable or unusual for a prospective buyer to rely on the information given to them by the seller on a car’s previous history, especially when the car is particularly old - like in this case. And it’s expected of a customer (when purchasing insurance cover) to use the car’s registration information to help answer any questions an insurer might ask them during the policy inception. The modifications on Mr L’s car were supplied and fitted by the same manufacturer. So, I don’t think Mr L had any reason to question the information he was given at the point he purchased the car. Nor had any reason to doubt the information included within the car’s logbook. Therefore, I’m not persuaded a reasonable person in the same set of circumstances would have acted differently to the way Mr L acted. And I can’t reasonably conclude that he failed to take reasonable care when answering the questions around modifications. As I don’t think Mr L failed to take reasonable care when applying for the policy, I can’t say there’s been a qualifying misrepresentation as per CIDRA. So, I don’t think LV acted reasonably when it avoided Mr L’s policy and declined to cover his claim. On that basis, I’m minded to uphold this complaint.

My provisional decision

For the reasons I’ve set out above, subject to either party providing more information, I am minded to require Liverpool Victoria Insurance Company Limited to settle Mr L’s complaint as follows:

1. Remove all record of the policy avoidance/cancellation from internal and external insurance databases; and
2. Reconsider Mr L’s claim in line with the existing terms of the insurance policy.

Responses to my provisional decision

I invited both Mr L and LV to respond to my provisional decision. Mr L accepted my provisional decision. LV disagreed. It provided a copy of a call recording between Mr L and LV’s claims department from April 2024, in which it says Mr L confirmed the car had modifications and he insured it as such. LV says he didn’t but he was aware of the modifications that he failed to disclose.

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 thought carefully about LV's submissions and I've listened to the call it provided. During this conversation, LV informed Mr L the engineer who inspected the car identified a body kit on it, and whether Mr L knew about it or added it himself. Mr L says the car is the same as what he purchased it for. And goes on to explain the previous owner bought it directly from the manufacturer and no modifications have been made to it. He confirms the make of the car, inclusive of the modifications and says this is what he told LV at the point he bought the policy.

LV then informed Mr L the body kit is non-standard and asked Mr L whether the previous owner told him it came out the factory like that, to which Mr L responded saying 'yes'. LV says Mr L was aware of the modifications when he bought the policy and he failed to disclose these when applying for cover. Had he done so, it wouldn't have offered him the policy.

As I explained in my provisional decision, 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. LV says the modifications fitted to the car are non-standard, which has been confirmed by the manufacturer. But the type of modifications fitted to Mr L's car are not uncommon on the make of car Mr L owns and it seems the manufacturer allows such modifications. So, I don't think Mr L had any reason to question what the previous owner had told him when he bought the car.

As I explained previously, I need to consider what a reasonable person in the same set of circumstances would do – i.e. was Mr L's actions in line with what a reasonable person would have done. And I think they were. That's because I don't consider it unreasonable for a prospective buyer to rely on the information given to them by the seller on a car's previous history. Mr L has told us he understood the modifications were fitted by the manufacturer at the point it was made – and given the modifications are ones fitted to the make of car Mr L bought, I don't think he acted unreasonably in relying on this information or that he considered the car had been modified.

The question Mr L was asked when he applied for cover said “*Does the [make and model of car] have any modifications?*” The question also included a help box to provide assistance that said “*if you or a previous owner has made a change from the manufacturer's original specification, such as alloy wheels, air conditioning, bodywork, exhaust system, suspension or tinted windows, add it here.*” As Mr L has said he was informed by the previous owner the car hadn't been modified by them nor had he made the modifications himself. And I have no reason to doubt that. So, I don't think he acted unreasonably when relying on the help box in answering the question the way he did.

LV says Mr L didn't use the car's registration details when he applied for cover, which it says is what a reasonable person would do. But I'm satisfied he did. The model of car Mr L insured is the same as what's recorded on the car's registration documents as confirmed by LV. I appreciate LV's comments that Mr L told it (during the call from April 2024) that it was a different model (inclusive of the modifications), but I don't think Mr L considered them as modifications – simply they'd been added by the manufacturer during production – as confirmed by the previous owner.

Whilst I appreciate LV's comments and its frustration on the decision I've made, I don't think these comments materially change the outcome of this complaint, or my direction for putting things right. I don't think Mr L failed to take reasonable care when applying for the policy, so I don't agree there's been a qualifying misrepresentation as per CIDRA. So, I don't think LV acted reasonably when it avoided Mr L's policy and declined to cover his claim. It follows I'm directing LV to put things right as I've set out in my provisional decision.

My final decision

For the reasons provided I uphold this complaint. I direct Liverpool Victoria Insurance Company Limited to:

1. Remove all record of the policy avoidance/cancellation from internal and external insurance databases; and
2. Reconsider Mr L's claim in line with the existing terms of the insurance policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 17 February 2025.

Adam Travers
Ombudsman