DRN-5371818

## The complaint

Mr D complains Liverpool Victoria Insurance Company Limited unfairly avoided his motor insurance policy.

Mr D's been represented for the complaint. For ease of reading, I've referred to the representative's actions as being Mr D's own.

## What happened

In May 2023 Mr D had a collision with a third-party (TP) when driving his car. He claimed for the damage to his car against his LV motor insurance policy. After investigating the claim LV said Mr D had, when taking out the cover, failed to declare various modifications to his car. It said had it been informed of them it wouldn't have offered cover. So LV avoided the policy (treating it as though it had never existed) and declined his claim. In July 2023 LV sought reimbursement of around £12,000 claim costs from Mr D - including costs paid to settle a claim from the TP.

Mr D complained about the avoidance and other aspects of LV's handling of the claim – including it disposing of his car's salvage, his claim hadn't been paid and he was being unfairly asked to pay LV the claim costs. He said he wasn't aware the car had modifications.

In response LV said it was reasonable to believe he was aware of the modifications to the car when he purchased it. It considered he had recklessly misrepresented them. So it maintained its decision to avoid the policy and retain the premiums. LV said it had decided not to seek reimbursement of claim costs from Mr D.

Mr D didn't accept that. He referred a complaint to the Financial Ombudsman Service. He said he had been left without car, will now find it difficult to find insurance and has been caused distress and inconvenience. He said he had only received £1,000 for the car's salvage, losing £8,000 and wasn't given an option to retain the salvage. He asked that LV provide confirmation it will not seek recovery of claim costs. He said it had responded to a Subject Access Request (SAR) late, with £75 compensation offered for that too little. To resolve his complaint, he would like the policy to be reinstated, his claim paid and substantial compensation.

Our Investigator felt LV had shown Mr D had made a qualifying, reckless misrepresentation. As a result he felt it's decision to avoid the policy to be fair - and in line with the relevant legislation. The Investigator also felt LV had done enough to satisfy Mr D's request for confirmation that it would not try to recover the claim costs. He felt it had acted fairly in regard to disposing of the salvage and had paid sufficient compensation for the late SAR response. He didn't recommend LV settle Mr D's claim, reinstate the policy or do anything differently. As Mr D didn't accept that outcome the complaint was passed to me.

## 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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Mr D and LV have provided. Instead, I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

avoidance of the policy

The relevant legislation for me to consider is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). It gives insurers the ability to take certain action, like avoiding a policy, if a 'qualifying misrepresentation' has been made. I've first considered if there was a misrepresentation.

Having considered the relevant evidence, including photos of the car and information from its manufacturer, I'm satisfied the car had been modified - changed from the manufacturer's standard specification. LV provided photos comparing it to one of the same year, make and model it considers represents a standard unmodified example. LV highlighted what it considers to be modifications to Mr D's - tinted windows, nonstandard alloys, nonstandard double exhaust, painted badge, painted brake callipers, removal of other badges and a sun strip.

I'm satisfied that some, if not all, of these are modifications from the manufacturer's standard specification. Mr D has said all were on the car when he bought it. That means the modifications were in place when the policy was taken out.

LV has said when taking out the policy Mr D answered 'No', on an aggregator website, to the question '*Has the car been modified in any way?*'. Policy documentation, sent to him after he took out the cover, asked Mr D to check the information it contained. It asked him to correct anything that's wrong, warning of possible rejection or avoidance if it isn't corrected. The documentation said '*Car modifications: Hasn't been changed from the manufacturer's standard specification, except for disability modifications.*'. Mr D didn't, in response, advise of any modifications.

So it's fair for LV to say there was a misrepresentation – non-disability modifications weren't declared. But for it to take any action, like avoiding the policy and declining the claim, there would need to be a 'qualifying misrepresentation'. For that a few things are required. Firstly, there must have been a failure to take reasonable care not to make the misrepresentation. The standard of care is that of a 'reasonable consumer'.

CIDRA sets out several things to be considered when deciding if a consumer took reasonable care. One is how specific and clear the questions asked were. I've set those out above. Another is any relevant explanatory material.

LV has said the following guidance was given with the aggregator site question. '*If you or a previous owner has made a change from the manufacturer's specification, such as alloy wheels, air conditioning, bodywork, exhaust system, suspension or tinted windows, add it here. If you are unsure if your car's been modified, check its previous history to find out*.'

Mr D's made various comments about the modifications including the following. He has said he wasn't aware of modifications, they were already there when he bought the car and he thought they were standard. I've considered everything he's said and provided. But I'm satisfied its fair for LV to say he failed to take reasonable care not to make a misrepresentation.

The guidance refers to modifications by previous owners. It specifically refers to some of the modifications relevant to Mr D's car. Some of the modifications, including the tinted windows, are easily observed, even for someone with little knowledge of cars. Even if Mr D wasn't sure if the twin exhaust or tinted windows were modifications it would have been reasonable for him to, as the guidance advises, check the car's history. If he had done so he would likely have discovered the car had modifications. So I'm satisfied there was a failure to take reasonable care not to make a misrepresentation.

LV also needs to show that without the misrepresentation it wouldn't have offered cover - or would have only done so on different terms. It's provided evidence to demonstrate that had the modifications been declared it wouldn't have offered cover. So it's reasonable for LV to consider there has been a qualifying misrepresentation. In the circumstances, CIDRA, allows it to avoid the policy and decline any claims.

Where a misrepresentation is 'deliberate or reckless' CIDRA allows insurers to retain the premium. LV retained the premium, considering Mr D was reckless. For a misrepresentation to be deliberate or reckless LV needs to show Mr D:

- knew the information he provided was untrue or misleading or did not care whether it was untrue or misleading; and

- knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.

I've seen photos of Mr D's car. The combined effect of the various modifications is a certain, likely deliberate, style or look. That look is quite distinct from a standard version of the car. I've considered his various comments about his knowledge of the modifications. But it seems unlikely, with that combined effect, that Mr D was unaware of any of the modifications or believed the car to be of standard specification. With the question asked and guidance provided in mind, it's reasonable to consider he knew the subject of modifications was relevant to the insurer - and that an answer of 'no' was untrue or misleading, or that he didn't care if it was.

So I consider LV's decision that there was a reckless misrepresentation to be in line with CIDRA, and fair and reasonable. That means I'm not going to require it to reinstate the policy, meet the claim or return any premium.

salvage

Mr D's car was assessed by LV's engineer as a Category B total loss. LV disposed of the salvage. Mr D's unhappy that he wasn't given the option to retain the salvage. Category B cars must be broken and disposed of. Mr D hasn't demonstrated that he would have likely been able to break and dispose of the car in line with the various regulatory requirements. So I'm not going to interfere with LV's decision to dispose of it.

recovery of claim costs

LV explained to Mr D, in an August 2024 complaint response letter, that it had decided not to seek reimbursement of claim costs from him. I haven't seen anything to persuade me it changed its position on this. So, I'm not going to require it to provide anything further. I don't consider it necessary.

SAR

I'm satisfied LV's already compensated Mr D for its late response to his SAR. I can't see that receiving it a few weeks after the deadline prejudiced his complaint. He has had opportunity to consider the contents and comment on them. Having considered his comments, I'm satisfied LV acted fairly and reasonably when avoiding the policy and declining his claim.

## My final decision

For the reasons given above, I don't uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 22 April 2025.

Daniel Martin
**Ombudsman**