

The complaint

Mr C complains U K Insurance Limited (UKI) declined his claim and avoided his motor insurance policy. He also complains it didn't place the avoidance on hold as it said it would.

What happened

In March 2023 Mr C was unfortunately involved in an accident involving another vehicle and so reported a claim under his motor insurance policy. During its investigation into Mr C's claim, UKI said it became aware Mr C's vehicle had been modified and it hadn't been made aware of these modifications. It wrote to Mr C asking him to contact it within ten working days or it would be avoiding his motor insurance policy. Following a discussion with Mr C, UKI wrote to him to say had it been made aware of the modifications on his vehicle it wouldn't have offered him a policy. It said it would be avoiding his policy and declining to deal with his claim.

Mr C raised a complaint about UKI's decision to avoid his policy. He also said he made UKI aware he had suffered a family bereavement and requested the avoidance be placed on hold and this had been agreed. On 7 May 2024 UKI issued Mr C with a final response to his complaint. It said it believed its decision to avoid his policy and not deal with his claim was the correct one. It acknowledged it had given Mr C the impression it would be placing the avoidance on hold and so paid £100 compensation as an apology. Mr C didn't think this was reasonable and so referred his complaint to this Service.

I told both parties I was intending to uphold Mr C's complaint. I said the relevant law was the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). I said I didn't think Mr C had failed to take reasonable care when he hadn't told UKI his vehicle was modified and so it wasn't reasonable for UKI to avoid Mr C's policy. I said UKI should remove any record of the avoidance of Mr C's policy. As Mr C had submitted his claim directly through the third party's insurer, I didn't intend to require UKI to deal with Mr C's claim. I said it should provide Mr C with a pro-rata refund of his premium calculated from the date it avoided his policy to the end date of his policy. I also said it should pay Mr C £750 compensation for the distress and inconvenience it caused by avoiding his policy and for the misleading information it provided about putting the avoidance on hold.

Mr C responded to say he had to claim directly through the third party's insurance company and because of the avoidance he was unable to insure his vehicle elsewhere. He said he eventually scrapped the vehicle and purchased a new vehicle which he insured elsewhere.

UKI responded to say they didn't agree. It said it believed Mr C had failed to take reasonable care when he failed to make it aware his vehicle was modified. It said Mr C was aware of the modifications to his vehicle. It said even if Mr C wasn't aware his vehicle had been modified and believed these modifications were a model of the vehicle he owned, when this didn't match his V5 document, a reasonable consumer would have done more to clarify this. It also said it had refunded Mr C all of his policy premiums dating back to 2021 when he first took out his insurance policy with UKI.

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 want to acknowledge I've summarised Mr C's complaint in less detail than he's presented it. I've not commented on every point he has raised. Instead, I've focussed on what I consider to be the key points I need to think about. I mean no discourtesy by this, but it simply reflects the informal nature of this Service. I assure Mr C and UKI I've read and considered everything that's been provided.

The relevant law in this case is 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.

UKI believes Mr C failed to take reasonable care when it didn't make it aware of modifications to his vehicle.

When Mr C purchased his insurance policy he was asked to give the registration or make and model of his vehicle. He was then asked:

'Has your vehicle been modified?'

A modification is anything that's been added to your car, changing it from the manufacturer's standard specifications.'

Mr C answered, 'no' to this question.

UKI's engineer has said Mr C's vehicle had been converted which meant it had been modified. I'm satisfied based on the evidence provided Mr C's vehicle had been modified from the manufacturer's standard specifications.

However, what I need to consider is whether Mr C failed to take reasonable care when he failed to make UKI aware his vehicle had been modified. The standard of care required is that of a reasonable consumer.

Mr C didn't modify the vehicle himself, so the modifications were already on the vehicle when he purchased it. He said his brother recommended the vehicle to him, and he purchased it following a test drive.

Mr C has said he was unaware his vehicle had been modified. He said whilst his vehicle had the conversion branding on, he believed this was a particular model of his vehicle. He said when he purchased his insurance policy he attempted to put the brand of the conversion as the model of his vehicle, but when this was unavailable, he put in his registration and the details matched what was on his V5 document and so he insured his vehicle on this basis.

UKI have said Mr C was aware of the conversion and had attempted to put the brand of the conversion in as the model of his vehicle. It said when the brand of the conversion wasn't an option he could select, it should have alerted him to the possibility his vehicle may have been modified. Alternatively, when the branding on his vehicle didn't match the details on the V5, it should have prompted Mr C to carry out further research before insuring his vehicle.

Taking into consideration all of the available evidence, I'm not persuaded Mr C has failed to take reasonable care when he didn't make UKI aware his vehicle had been modified.

As explained Mr C didn't modify the vehicle himself and so wouldn't have necessarily known his vehicle wasn't standard. UKI have provided the sales advert of the vehicle before Mr C purchased it, and it does mention the conversion. However, the advert explains the vehicle was taken straight from the factory for the conversion and then was returned back to the manufacturer approved garage to be handed over to the new owner. Mr C hasn't said he saw this advert, but even had he done so, I'm not persuaded a reasonable consumer would have known this meant the vehicle had been modified, or that the conversion wasn't carried out by the manufacturer. And having seen the photographs of the vehicle, I'm not persuaded it would be immediately obvious to a reasonable consumer the vehicle had been changed from the manufacturer's specifications.

Mr C has said he tried to put in the brand of the conversion in as the model of the vehicle when he looked to purchase his insurance policy. However, as this wasn't an option he put in the registration and as this matched what was on the V5 he proceeded on this basis. UKI have said when you put in the registration of Mr C's vehicle on the price comparison site, it doesn't automatically populate the make and model of the vehicle, so Mr C would have had to enter this manually.

Whilst I acknowledge the price comparison site doesn't currently populate the details of Mr C's vehicle today, I've not seen any evidence this was the case in 2021 when Mr C took out his insurance policy. But in any event, I'm not persuaded this changes whether Mr C failed to take reasonable care when insuring his vehicle. I don't think a reasonable consumer in these circumstances would have been aware their vehicle had been modified, or would have sought to carry out further research if the details of the vehicle they are looking to insure matched what was on their V5 document.

As I don't think Mr C failed to take reasonable care when purchasing his insurance policy, UKI weren't entitled to avoid Mr C's policy in accordance with CIDRA. And so I think UKI made an error when it avoided Mr C's policy and declined to deal with his claim. I've considered the impact this has had on Mr C.

UKI have refunded Mr C the premiums he has paid toward his policies since 2021. It has confirmed it sent Mr C two cheques, which haven't been cashed, and two separate premium refunds to the accounts he paid for his policies from. As UKI shouldn't have avoided Mr C's policy, it wasn't necessary for it to refund Mr C his policy premiums. Therefore, I think it would be reasonable for UKI to cancel the cheques it has sent, and for Mr C to give UKI back the policy refunds he has received to his accounts.

However, I don't think it's reasonable for UKI to retain all of the premium Mr C paid toward his last policy with UKI. Mr C's policy was due to run until January 2025 but UKI avoided it in April 2024. As a result the claim wasn't dealt with, Mr C scrapped his vehicle, and then purchase a separate insurance policy for his new vehicle through a different provider. Therefore, UKI weren't providing Mr C with any cover at the point it avoided Mr C's policy. So, I think Mr C is entitled to a pro-rata refund of premium calculated from the date UKI avoided Mr C's policy, to the end date of his policy. It can look to offset this pro-rata refund against the premium refund Mr C needs to pay back to it.

As this was a non-fault accident, Mr C was able to submit his claim directly through the third-party insurer and so I don't require UKI to deal with Mr C's claim. However, I think Mr C has been caused unnecessary distress and inconvenience due to being told his policy had been avoided, and having to approach the third-party insurer directly to deal with his claim. Particularly given this happened at a very difficult period for Mr C.

Mr C has mentioned his premiums increased due to the avoidance of his policy and he's provided evidence of the quote he received when trying to insure his vehicle, and the new insurance policy he purchased with a different vehicle. Whilst I can acknowledge the avoidance of Mr C's policy may have been a factor which impacted the premium he was asked to pay, I don't think the evidence demonstrates what impact this had. When Mr C looked to purchase a new insurance policy for his vehicle that had been modified, he declared the modifications he was now aware of, and declared the accident he had in 2023. These factors would have likely impacted the premium he was being asked to pay, and so I don't think Mr C has shown the increased premium he was quoted was due to the policy being avoided.

Similarly, Mr C has taken out a new policy with a different vehicle but hasn't been able to demonstrate the impact the avoidance of his policy has had on the premium he is now being charged. Therefore, I don't think it would be fair to require UKI to refund Mr C the premium he is now paying for his motor insurance policy.

UKI have acknowledged it made an error when it gave Mr C the impression it would be placing the avoidance of his policy on hold. This would have caused Mr C particular distress given he was dealing with a family bereavement at the time, which UKI were aware of. Mr C has been caused further distress and inconvenience due to UKI incorrectly avoiding his policy and having to deal with his claim directly through the third-party insurer. Taking into consideration the considerable distress and inconvenience Mr C has been caused due to UKI's errors, I think it's reasonable it pays Mr C £750 compensation.

My final decision

For the reasons I've outlined, I uphold Mr C's complaint about U K Insurance Limited. I require it to:

- Remove any record of the avoidance of Mr C's policy
- Pay Mr C a pro-rata refund of policy premium calculated from the date it avoided Mr C's policy to the end date of his policy. It can offset this from the premium refund Mr C needs to pay back to it
- Pay Mr C £750 compensation. It can offset this from the premium refund Mr C needs to pay back to it

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 29 April 2025.

Andrew Clarke
Ombudsman