

The complaint

Mr R complains that Advantage Insurance Company Limited avoided (treated it as if it never existed) his motor insurance policy after he made a claim. He wants records of the avoidance removed.

What happened

Mr R's car was damaged in a single car accident, and he made a claim on his policy. Advantage took the car for repair, but the repairer alerted Advantage that the car had a number of after manufacture modifications, including to the exhaust. Advantage told Mr R that if he had disclosed these when he first took out his policy it would have declined to cover him. It thought he had made a careless misrepresentation. So it avoided the policy and declined the claim.

Mr R paid for his car to be repaired. He said he wasn't aware that the car had been modified. He said he thought it was just a high specification model. He wanted records of the avoidance removed as this was affecting his premiums.

Our Investigator didn't recommend that the complaint should be upheld. He thought the exhaust on Mr R's car had been modified. He thought Mr R should have reasonably checked whether the car had been modified when asked by Advantage. He saw that Advantage wouldn't have offered cover if he had disclosed this. And so he thought Advantage had fairly and reasonably treated the misrepresentation as careless, refunded the premium since renewal, recorded the avoidance and declined the claim.

Mr R replied that he hadn't been given any indication by the seller that the car had been modified. He thought he had been unfairly treated. He accepted that he had to pay for the car to be repaired. But he wanted records of the avoidance removed so that he didn't need to disclose this in the future.

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.

Mr R has explained that he had to pay over £4,000 to have his car repaired. And his new insurance is more expensive. This matter has had a significant financial impact for him and I can understand that that he feels frustrated by Advantage's decision.

Advantage said it had avoided Mr R's policy because of misrepresentation. So I'm satisfied that the relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

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

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 misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

Advantage thinks Mr R failed to take reasonable care not to make a misrepresentation when he stated in his application via a comparison site that his car didn't have any modifications. And I've looked at the question he was asked when he completed the application, and I agree he failed to take reasonable care.

This is because he was asked:

"Does [your car] have any modifications?"

And he was provided with advice so that he could answer this question correctly. This explained that the car had modifications if he or any previous owner had made a change from the manufacturer's original specification. And so I think this was a clear question asked by Advantage through the comparison site Mr R used.

Mr R said "No". He's explained that this was because he wasn't aware that the car had any post-manufacture modifications. In fact, Mr R's car had several modifications that significantly altered the appearance of the car from a standard model, including changes to the exhaust system, which he should have disclosed. But he didn't.

I think any reasonable consumer would have noted the differences, as Mr R said he did, and checked when they had been added. So I think this means Mr R failed to take reasonable care not to make a misrepresentation when he said the car had no modifications. This error was repeated at the two subsequent renewals and Mr R didn't correct this.

Advantage has provided evidence from its underwriting guide which shows that if Mr R had not made this misrepresentation, it would not have offered him cover at all. This means I am satisfied Mr R's misrepresentation was a qualifying one under CIDRA.

I also think Mr R's misrepresentation was a careless misrepresentation. This is because Advantage hasn't provided evidence to show that Mr R intended to answer the question incorrectly. He's explained the modifications weren't stated on the seller's advertisement, although he's not been able to provide this. And a dealer's garage hadn't told him that the car had been modified when he took it for MOTs. But Mr R didn't check the car's history. So I'm satisfied it was a careless misrepresentation.

As I've said above, if the qualifying misrepresentation was careless and the insurer would not have offered cover if the consumer hadn't made the misrepresentation, it's entitled to avoid the policy and decline the claim. But it must return the premiums, as I can see Advantage has done.

Therefore, I'm satisfied Advantage was entitled to avoid Mr R's policy and decline his claim in accordance with CIDRA. And I think this produces the fair and reasonable outcome in this complaint. I don't require Advantage to remove records of the avoidance.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 23 September 2025.

Phillip Berechree
Ombudsman