

## The complaint

Mr M complains that One Insurance Limited unfairly avoided his motor insurance policy and refused to pay his claim.

## What happened

Mr M took out a motor insurance policy with One Insurance through an online price comparison site. When he was involved in a collision he tried to make a claim.

One Insurance said he'd answered the question it asked about modifications to his vehicle incorrectly. And it considered this to be a careless qualifying misrepresentation, which entitled it to avoid his policy and decline his claim because of this. It also kept the premiums he'd already paid.

Mr M brought his complaint to us and our investigator thought it should be upheld. They agreed there had been a qualifying misrepresentation. But didn't think this was deliberate or reckless. They believed it was careless. They thought One Insurance were entitled to avoid Mr M's policy and decline his claim but that it should return the premiums he'd paid.

Both One Insurance and Mr M don't agree with the investigator and has asked for an ombudsman's decision. Mr M thinks One Insurance should pay his claim because he thought the modifications to his van were optional extras. One Insurance don't think it should have to pay back the policy premiums at this stage. It said it was holding on to them in case there was a claim to settle for the third -party involved.

## 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.

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 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.

One Insurance thinks Mr M failed to take reasonable care not to make a misrepresentation when he stated in his application via a comparison site that his vehicle wasn't modified. I've looked at the question asked and it says; *Has the van been modified in any way? This*

*includes fitting it with any optional extras such as changes to the bodywork, engine or wheels.*

After the question there was guidance which says;

*“What counts as a modification?”*

*A vehicle has been modified or adapted if it's been changed from the manufacturers standard specification in any way.*

*Examples include:*

*Changes to the bodywork, including spoilers and/or body kits*

*Changes to the suspension, brakes, engine or exhaust system*

*Cosmetic changes such as alloy wheels, paint, stickers or decals”.*

There was then the option to select either *yes* or *no*. Mr M answered *no*.

I don't think Mr M took reasonable care when answering *no*. Because it was a clear question, supported by clear guidance, asked by One Insurance through the comparison site he had used.

This is a qualifying misrepresentation and if Mr M had not made the misrepresentation One Insurance said it would never have offered him cover.

One Insurance has provided evidence by way of its underwriting guide which shows it declines to offer motor insurance cover for vehicles with any modifications.

This means I'm satisfied Mr M's misrepresentation was a qualifying one.

One Insurance has said Mr M's misrepresentation was careless because he had not realised the additional extras to his van were modifications. For the same reasons I agree Mr M's misrepresentation was careless, rather than deliberate or reckless.

As I'm satisfied Mr M's misrepresentation should be treated as careless I've looked at the actions One Insurance can take in accordance with CIDRA. Because it wouldn't have offered cover it can;

- Avoid the policy from the point of misrepresentation. Often from the start, but not always (mid-term).
- Return any unused premiums the consumer paid.
- Treat the policy as though it never existed from the point of avoidance and not deal with any claims.
- Look to recover any cost's it's paid to a third party on any claim after the misrepresentation.

In this case One Insurance have avoided Mr M's policy and not dealt with his claim. However it hasn't yet returned the policy premiums paid. It has explained that it has kept hold of them until the claim is closed. It said it would not be in a position to instruct a premium refund until it is confident no third-party claim will arise, because Mr M was the party responsible for any damage. It said if it received no correspondence or indication of a claim then it would look to close it after a year.

I can understand why One Insurance has kept this claim open, however our service would expect a claim to be closed within a reasonable period of time. As almost one year has now passed it should now be closed if no contact has been received from the third-party.

Although I acknowledge the reason One Insurance has decided to retain Mr M's policy premiums, it has acted outside the boundaries of CIDRA by retaining them, and this needs

to be rectified. Since it has relied on CIDRA to avoid Mr M's policy, for careless misrepresentation, to adhere to it, it needs to return his premiums.

Therefore, although I agree that One Insurance fairly avoided Mr M's policy and didn't deal with his claim,

I realise this matter has caused Mr M a great deal of distress, and has had a significant cost to himself, but as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing One Insurance to rely on it to avoid his policy produces the fair and reasonable outcome in this complaint.

### **Putting things right**

I require One Insurance to refund to Mr M the policy premiums paid for the term of cover and close the claim.

### **My final decision**

For the reasons set out above, I've decided to uphold Mr M's complaint.

I require One Insurance Limited to;

- Return Mr M's policy premiums paid for the term of cover from 31 July 2024.
- Close this claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 October 2025.

Sally-Ann Harding  
**Ombudsman**