

The complaint

Mr A complains Liverpool Victoria Insurance Company Limited unfairly voided his motor insurance policy.

What happened

Mr A's car was stolen but recovered. He claimed for theft related damage against his LV motor insurance policy. However, LV avoided his policy (treating it as though it had never existed) and declined the claim. It said it had discovered the car had several modifications Mr A hadn't declared when taking out the cover. It explained that had it been made aware of them, it wouldn't have offered him cover. LV, considering Mr A had acted recklessly by not declaring the modifications, retained his policy premium.

Mr A complained about LV's decision being unfair. He didn't dispute the car having been modified, but said he hadn't intended to provide misleading information. He hadn't been aware, when arranging the insurance, that the car had been modified. LV maintained its decision. It considered Mr A had been aware of the modifications. Unsatisfied with LV's response Mr A referred his complaint to the Financial Ombudsman Service.

Mr A explained he had won the car in a competition and hadn't been given any indication it had been modified. He considered he had acted in good faith, providing what he thought to be truthful and accurate information, when declaring the car hadn't been modified. He said LV, when avoiding the policy and declining the claim, had failed to act in line with the relevant legislation. To resolve his complaint, he would like LV to reinstate the policy, consider the claim and pay him compensation.

Our Investigator found LV's decision to avoid the policy, decline the claim and retain the premiums to be fair and made in line with the relevant legislation – the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). He felt LV had shown Mr A had made a reckless misrepresentation. So he didn't recommend it reinstate the policy, consider the claim or refund the premiums. As Mr A didn't accept that outcome the complaint was passed to me to decide. He made several points including that he didn't recklessly misrepresent, and he was unaware of the modifications.

I issued a provisional decision. In it I explained why I intend to find LV had acted fairly by avoiding Mr A's policy, but not when retaining his premium. The reasoning forms part of this final decision so is copied in below. I also invited Mr A and LV to provide any further evidence or comments they would like to be considered.

what I've provisionally 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 A 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.

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. LV has said Mr A, when taking out the policy was asked on a comparison site:

'Has the car been modified in any way?'

LV has quoted 'help text' it says Mr A was provided with:

'A car is considered modified it is if it has been changed in anyway since it was first supplied by the vehicle manufacturer. This would include changes to the body work, suspension or brakes, cosmetic changes and changes to the engine management system or exhaust system. If you aren't sure whether changes to the vehicle are classified as a modification, please check with your chosen provider before purchasing.'

LV provided a further question Mr A was asked during his sales journey.

'Does this ...(Mr A's type of car)... have any modifications, other than for disabilities, air conditioning, fog lights, parking sensors and tow bars?'

The second page of policy documentation, provided to Mr A after the policy was set up, explained under the heading of 'Car modifications':

'Changes to the manufacturer's standard specification aren't accepted, except for air conditioning, fog lights, parking sensors, tow bars or disability modifications. You don't need to tell us about these accepted changes'.

Mr A doesn't deny answering, 'no', when asked about modifications. LV considers this was a misrepresentation, as the car has modifications other than those given above as acceptable. The items it has referred to are a full body kit, front splitter, side skirts, a rear diffuser and rear spats.

LV has said these items are not manufacturer fitted. Instead, being post-build items, with no relation to the car's manufacturer. Having considered these items, I'm satisfied the car was 'modified' (beyond those deemed above as acceptable) as is commonly understood by the term – and as set out above in the 'help text'. So I'm satisfied there was a misrepresentation. when Mr A answered 'no' to the questions about modifications,

But for LV 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. First, there must have been a failure to take reasonable care not to make the misrepresentation.

CIDRA sets out several things to be considered when deciding if a consumer took reasonable care not to make a misrepresentation. One is how specific and clear the questions asked were. Another is any relevant explanatory material.

I'm satisfied the questions were clear and would be understood by a reasonable consumer. Further I'm satisfied the help text is clear that bodywork, cosmetic and performance related changes are considered modifications.

Mr A has said he wasn't aware that the relevant features were modifications, rather than factory fitted. He's provided a copy of an advert for the car. He saw this before taking out the insurance. He has said all the features it refers to are presented as part of its overall description. He considers a reasonable layperson, like himself, wouldn't understand the car had been modified.

I've considered Mr A's arguments, but I'm not persuaded by them. A reasonable consumer would, from the presentation and style of the car and the advert's long list of features, as a minimum consider it possible it had been modified from its original factory condition. The advert provides a non-original manufacturer brand name for the various modifications LV referred to. That's a strong indication of a non-original manufacturer part.

I consider that even if Mr A wasn't certain of modifications, it would have been reasonable for him, having seen the car and the advert, to have investigated the matter. If he had, straightforward research of the relevant parts would have informed him that they are modifications. I consider a failure to explore the matter, constitutes a failure to take reasonable care.

So considering everything, including the questions and explanatory guidance, I think its most likely Mr A understood the question and failed to take reasonable care not to make a misrepresentation when he gave 'no' as an answer.

LV also needs to show that without the misrepresentation it wouldn't have offered cover - or would have only done so on different terms. I'm satisfied, based on what I've seen of its underwriting criteria that it wouldn't have offered cover at all if the modifications had been declared.

According to Mr A the modifications were only cosmetic, with no impact on performance or risk of theft, so they wouldn't materially influence LV's underwriting decision. Even if what he says about performance and theft is correct, I disagree with his conclusion about interaction with LV's underwriting. As I've said it's evidenced that cover would have been declined.

So it's reasonable to say there's been a qualifying misrepresentation. In these circumstances where no cover would have been offered, CIDRA allows insurers to avoid a policy and decline any claim. As a result, I intend to find LV's decision to do so to be fair and reasonable. I won't therefore be requiring it to reinstate the policy and consider the claim, as Mr A has requested.

When a qualifying misrepresentation is deliberate or reckless, CIDRA also allows insurers to retain the insurance premium. LV, considering Mr A acted recklessly, retained his premium.

For a misrepresentation to be deliberate or reckless CIDRA requires the consumer to have known the information he provided was untrue or misleading or that he did not care whether it was untrue or misleading. Further it is also required for the consumer to have known 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.

LV has said Mr A was given a full modification list in the advert, yet failed to disclose any. It's said the help text available to him aided him to understand what's considered a modification, so it considers he knew the modifications were relevant.

Mr A doesn't accept he acted recklessly. He's said he was unaware of there being any modifications, and had he been he would have declared them.

Whilst I accept Mr A likely failed to take reasonable care not to make a misrepresentation, LV hasn't persuaded me he acted recklessly. He wasn't provided with a 'list of modifications' as it claims. Instead, he was provided with a long list of the car's features and specifications. Within that several modifications were listed, but they weren't titled or labelled as 'modifications'.

I accept there was enough information to prompt a reasonable consumer to consider the car might well have been modified. That's part of my reasoning for considering Mr A failed to take reasonable care. But I'm not persuaded the modifications were presented quite as obviously as LV claims. It hasn't then persuaded me Mr A knew he was providing incorrect information, or that he didn't care if it was untrue or misleading. For these reasons, it hasn't demonstrated that he likely did act recklessly.

So, whilst I consider it was reasonable for LV to avoid his policy, I intend to find it didn't act in line with CIDRA, or fairly, when retaining his premium. I will then require it to reimburse Mr A's premium. As he has unfairly been without those funds it will need to add simple interest applied at 8% - from the date of its initial avoidance of the policy to the date of final settlement.

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 A accepted my position on the avoidance of the policy. Whilst he was pleased I intended to find he hadn't acted recklessly when not declaring the modifications, LV wasn't.

LV highlighted my provisional decision's acknowledgment of the car's advert providing a non-manufacturer brand name for some modifications. It added that my position that Mr A could have done more to research these items suggests more than carelessness, instead supporting recklessness.

I've considered LV's arguments, but I'm still don't consider its demonstrated Mr A didn't care if the answer he gave about modifications was untrue or misleading. I agree the failure to act upon the brand name demonstrates a lack of attention or consideration. But LV hasn't persuaded me he that he made a conscious decision not to explore the nature of the relevant items. So I'm still not satisfied LV has demonstrated Mr A acted recklessly. That means I will require it to return his premium.

Finally, Mr A raised concern at the possibility of LV, due to its position on recklessness, placing any markers related to possible fraud on databases. I agree it would be inappropriate for LV to do so, considering I have found it hasn't demonstrated he acted recklessly.

LV didn't respond to my request for it to confirm if it had placed any such markers against Mr A. I had also explained that if it has, I will require it to delete such records. With my position of the matter of recklessness in mind, it would be unreasonable for Mr A to experience the potential significant consequences of such records. In the absence of a

response from LV and to avoid potential unfair consequences for Mr A I'm making the following direction. Whilst I don't require LV to remove record of the avoidance itself from relevant databases, I do require it to do so for any record of, or reference to, him acting recklessly, fraudulently, potentially so or similar.

My final decision

For the reasons given above, I find it reasonable for Liverpool Victoria Insurance Company Limited to avoid Mr A's policy but require it to return his premium. It will also need to remove any records, from relevant databases, as set out above.

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

Daniel Martin
Ombudsman