

complaint

Mr R complains that U K Insurance Limited (UKI) voided his motor insurance when he claimed for an accident he'd had whilst driving.

background

Mr R bought a specialist sports car from abroad and had it imported into the UK. To insure it, he went online and got a quote from UKI. He then called UKI to confirm the quote and take out the insurance.

Some time later, Mr R had an accident while driving and, unfortunately, extensive damage was caused to his car. He claimed on the insurance and UKI collected the car and arranged for an engineer to inspect it.

The engineer reported that the car had been extensively modified. There were changes to the bodywork, including the spoiler and wheels, as well as the addition of air vents to the bonnet. The engine had been modified, including by replacement of the turbo, and there had been significant adjustments to the suspension, brakes and other parts. The brake horsepower had been increased from the standard 350 to over 600.

Internally, the seats had been replaced with racing bucket seats, the steering wheel had been changed and the air bags removed, and a lap timer had been installed. The lap timer recorded that at times the car had been driven at over 150 miles per hour. At the time of the accident, the car was being driven with racing slick tyres rather than standard road tyres.

UKI said that Mr R had misrepresented the car when he took out the policy. He'd said there were no non-standard modifications. That wasn't true, and if UKI had known of the extent to which the car had been modified it would never have insured it. So it cancelled the policy as if it had never existed – known as void from inception – and refunded all the premiums Mr R had paid. It said the car was now uninsured and so it wouldn't pay out a claim for the accident.

Mr R complained. He said he didn't know the car had been modified. It was the first time he'd bought a car like this and he didn't know the features weren't standard. He hadn't intended to mislead the insurance company. He'd taken out the insurance in good faith and it wasn't fair that he wasn't covered.

Our investigator didn't recommend upholding the complaint, so Mr R asked for an ombudsman to review his complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In dealing with complaints, my obligation is to decide what's fair and reasonable in all the circumstances – taking into account relevant law, regulatory rules and guidance and industry good practice.

In cases like this, there's a piece of relevant law for me to consider – the Consumer Insurance (Disclosure and Representations) Act 2012, known as CIDRA.

The Act says that people – such as Mr R – who take out consumer insurance contracts have a duty to take reasonable care not to make a misrepresentation to the insurer.

If a misrepresentation is made, and the consumer didn't take reasonable care, the insurer has a remedy if it can show the misrepresentation is what's known as a qualifying misrepresentation. That means that the insurer has to show that if it had known the true position it would have insured on different terms – or wouldn't have insured at all.

If there is a qualifying misrepresentation that's deliberate or reckless, the insurer can void the policy. If the misrepresentation isn't deliberate or reckless, it's deemed to be careless – and the insurer can still void the policy if it can show it would never have issued it had it known the truth.

Having set out, in brief, my understanding of the relevant law, I'll turn to the facts of this case.

In the first place, I think UKI has clearly shown that the car was extensively modified. It's produced evidence of the standard configuration – and the photos taken after the accident clearly show that the car is of non-standard specification.

Mr R hasn't said that he made any modifications. Rather, he's said that the car was in this configuration when he bought it, and he didn't realise it was non-standard.

When he took out the insurance, Mr R initially got a quote online. He was shown a series of statements and asked to confirm whether or not they were true. One of the statements was to the effect that the car had not been modified but was of standard configuration. Mr R ticked the box to confirm that was true.

Later, he phoned UKI to accept the quote and start the insurance. I've listened to a recording of that call. Firstly, Mr R was asked to confirm that nothing had changed since he filled in the online quote, and he answered "No". Later, he was asked to confirm a list of features of the car, which ended with "no modifications outside the standard line, is all that right?" Mr R answered "Yes".

I'm therefore satisfied that what Mr R told UKI wasn't accurate. He certified online that the car had not been modified. He told UKI on the phone that nothing had changed since, and then confirmed there were no non-standard modifications. In fact, there were – and UKI wasn't told about them.

I think what UKI asked Mr R was clear. I think it was – or should have been – clear to Mr R that this was an important matter to UKI and one which could affect the quote.

Mr R's explained that this was the first car of this type he'd bought, and he didn't realise that it was non-standard. But this was a very expensive car, and one which Mr R went to some trouble to buy. It had been imported into the UK. When Mr R spoke to the investigator after she'd told him she didn't think his complaint had been upheld, he told her he'd been researching the features of the car and there were different types, so he couldn't have been expected to have known this was non-standard.

This was a specialist purchase, for a large amount of money – Mr R paid in the region of £75,000 for the car. I don't think it's likely he would have done so without knowing what he

was buying and researching what he wanted and what was available. He researched it as part of dealing with this complaint, and I think he would have done before purchase. Even if he didn't know when he bought it, it would, or should, have been obvious that the car was modified to a racing condition once he took delivery.

Taking all of that into account, I think it was fair for UKI to conclude that Mr R hadn't taken reasonable care not to make a misrepresentation. I think he knew – or ought to have known – that the car had been modified from standard. He was asked clear and straightforward questions about that, and didn't answer them accurately.

UKI has said that Mr R was reckless, rather than careless. I don't think I need to decide that, since it was entitled to void the policy either way. It's shown, and I accept, that if it had known about the modifications it would never have insured the car. So it's entitled to void the policy as if it was never issued. It's refunded the premiums to Mr R, and in effect he's never been insured.

Mr R says the modifications didn't affect the cause of the accident. I don't know about that, since I don't have any evidence about the circumstances of the accident. I do understand his point, but even if the modifications had nothing to do with the accident that doesn't change the outcome of this complaint. As I've explained, the law says Mr R was under a duty not to mislead the insurer – and, because he did, the insurer's entitled to void the policy. The circumstances of a claim aren't relevant to that duty.

In all the circumstances, therefore, I think UKI acted reasonably in deciding that Mr R hadn't taken reasonable care not to mislead it. As, if it had known the truth, it would never have insured him, I think it was fair for it to void the policy. So I don't uphold this complaint.

my final decision

For the reasons I've given, 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 1 November 2018.

Simon Pugh
ombudsman