

The complaint

Mr P is complaining One Insurance Limited ('OIL') avoided his van insurance policy and in turn declined a claim he'd made.

Another party has acted on Mr P's behalf in the handling of Mr P's complaint, but for ease of reference I shall refer to anything said on Mr P's behalf as being said by Mr P.

What happened

In January 2024 Mr P was involved in an accident so he contacted OIL to claim for the damage to his vehicle. However, OIL later avoided Mr P's policy because it said he hadn't disclosed modifications on his car – namely a front bull bar, arch mouldings and stripes added to vehicle. Mr P thought this was unfair as he said he wasn't asked whether the car was modified. He also said he didn't know the car was modified and just thought it was a good version of the model.

OIL said he was asked to disclose them and he should have known the car was modified as other similar cars didn't have the same specifications.

Our Investigator upheld this complaint. She said the advert selling the car didn't refer to the car being modified and she thought it was understandable Mr P didn't realise the car was modified. So she thought it was unfair OIL avoided Mr P's policy and she thought it should reinstate the policy and consider the claim under the policy terms and conditions. She also thought OIL should also pay £100 for the unnecessary distress and inconvenience caused.

OIL maintained Mr P should have known the car was different to the original manufacture as it said it had shown it was different to other cars of the same age, make and model for sale on the market.

As OIL didn't agree with the Investigator's opinion, the complaint's been passed to me to decide.

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've decided to uphold this complaint and I'll now explain why.

I should first set out that I acknowledge I've summarised Mr P's complaint in a lot less detail than he's presented it. Mr P has raised a number of reasons about why he's unhappy with the way OIL has handled this matter. I've not commented on each and every point he's raised. Instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy about this, but it simply reflects the informal nature of this Service. I assure Mr P and OIL, however, that I have read and considered everything they've provided.

The relevant law in this case is the Insurance Act 2015. This required the policy applicant to make a fair presentation of the risk to the insurer so that it had enough information to assess the level of risk it was willing to provide and on what terms. And if the applicant fails to do this, the insurer has certain remedies provided the breach of this duty is – what the Insurance Act describes – as a qualifying breach. For it to be a qualifying breach 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 breach.

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

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 breach wasn't deliberate or reckless and the insurer would have charged a higher premium if the consumer had made an actual fair presentation of the risk, it will have to consider the claim and settle it proportionately if it accepts it.

OIL says Mr P failed to make a fair presentation of the risk by not disclosing a number of alleged modifications. To make a fair presentation of the risk, Mr P needed to tell OIL everything he knew or ought to have known that OIL would want to know to assess the risk. Mr P was asked when he took out the insurance policy whether the car was modified. So I think he was aware OIL needed to know this information. I'm also persuaded OIL has shown the car was modified, so I don't disagree with OIL that Mr P has provided OIL with incorrect information. However, while that is the case, I also need to think about what's fair and reasonable.

I don't consider Mr P to have been a "sophisticated purchaser", so his complaint needs to be considered in that light. As a result, I think it's fair to think about whether Mr P ought reasonably to have known his vehicle was modified or not. In thinking about this, I'm conscious the advert selling the car didn't say there were any modifications to the car. I also don't think it would have been reasonably apparent that these weren't optional extras added when the car was first manufactured. I note OIL's point that most cars of the same make and model didn't have these, but it's not unusual for some cars to have a higher specification than others. And I don't think it was unreasonable for Mr P to have concluded this was the case here. I'm not persuaded someone with the same knowledge and situation as Mr P would have acted in a different way to him.

Putting things right

Ultimately, while I understand OIL's point of view, I can't reasonably say Mr P acted unreasonably when making a fair presentation of the risk. So, in the specific circumstances of this complaint, I think it was unfair for OIL to have avoided Mr P's insurance policy. As a result, I think it should do the following to put things right:

- Remove any record of the policy's avoidance from Mr P's record;
- Reconsider the claim against the terms of the insurance policy as if it hadn't avoided the insurance policy; and
- Pay Mr P £100 in compensation.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require One Insurance Limited to settle Mr P's complaint in line with my instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 December 2024.

Guy Mitchell
Ombudsman