

## **The complaint**

Miss R complains that when her car was stolen and she submitted a claim to Aioi Nissay Dowa Insurance UK Limited trading as Insure the Box (ITB) they voided her policy from inception, as they said her car had modifications she hadn't declared.

She thinks this is unfair as she believed the modifications were factory fitted, and she wants them to pay her claim.

## **What happened**

Miss R had insurance for her car with ITB. She's a young driver and her car was fitted with a black box as part of her insurance. In October 2022 Miss R's car was stolen overnight from where she'd parked it near to her home. The first Miss R knew of the theft was the following morning when the car was missing.

She reported the theft to the police and notified ITB of her claim. A neighbour's ring doorbell had recorded footage of the theft which they sent to Miss R. The thieves smashed the driver's window to gain access to the vehicle.

There appears to be no dispute that Miss R's car was stolen. But when ITB were investigating her claim they established that the car had been modified and was an Abarth replica. And they said that if Miss R had declared the modifications when taking out her insurance they wouldn't have provided cover for her vehicle.

Miss R told ITB that the Abarth body kit had been factory fitted. She'd been told this by the person she bought the car from. ITB said this wasn't a standard modification and if they were going to accept this they'd need her to get confirmation from the manufacturers.

She contacted the vehicle's manufacturers, Fiat, who confirmed on 25 October 2022 that the kit factory fitted to her car was a Comfort Kit 1. Miss R provided a copy of this confirmation to ITB. The Comfort Kit includes automatic air conditioning, a height adjustable driver's seat and side mirrors with automatic defrost. It's not an Abarth body kit.

ITB spoke to Fiat who confirmed that Miss R's car had only been fitted with a Comfort Kit and that they don't provide or fit Abarth kits.

As the Abarth body kit hadn't been factory fitted and the car had been modified ITB voided Miss R's policy from inception. And they repaid her the premiums she'd paid over the two years she'd been insured with them. Although she was initially told they'd only be refunding one year's premium and she had to query this before they refunded all the premiums she paid.

Miss R wasn't happy with how ITB had dealt with her claim, or that her policy had been voided. This left her without a car and she was concerned that she wouldn't be able to afford insurance in the future, as she'd have to declare her policy had been cancelled. She said that photographs were taken of her car when her black box was fitted. So ITB had been aware of the modifications to her car and should have raised their concerns then, rather than

waiting until she had to make a claim.

ITB raised a complaint on her behalf, but this wasn't upheld in relation to the voidance of her policy. In their final response letter they said that their investigations had confirmed that the Abarth body kit wasn't a standard factory fitted modification to Miss R's car. Although they accepted she hadn't modified the car, they said that had she declared the modifications when taking out her policy they wouldn't have offered her cover.

They said they'd considered what she'd told them and were treating her failure to declare the modifications as a careless misrepresentation under the Consumer Insurance (Disclosure and Representation) Act 2012 (CIDRA). So they were voiding her policy from inception and would be refunding all the premiums she's paid during the time she'd been insured with them.

They acknowledged that their engineer could have identified the modifications when the black box was fitted. But said this didn't change that had she declared these when purchasing the policy, no cover would have been offered, so they said they'd acted correctly in voiding her policy.

Miss R had made a Subject Access Request (SAR) for all the information ITB held in relation to her claim. When responding to this request they'd included information relating to another policyholder. When Miss R advised them of this ITB had asked her to delete this information and she'd told them she had no intention of doing this.

So the final response letter also refers to her obligations under the Data Protection Act 2018 as the recipient of information not intended for her. But as she'd been sent wrong information this part of her complaint was upheld and ITB offered £150 for the poor service they'd provided.

Miss R wasn't happy with ITB's response and complained to our service.

Our investigator spoke to Miss R who confirmed that she now accepted that her car had been modified, and that these modifications weren't factory fitted. But she said she'd asked the seller if the car had been modified and he told her it hadn't. And she said she wouldn't have bought the car if she'd known it had been modified as she knew insurance would have been more expensive.

Our investigator asked ITB to provide details of the questions Miss R would have been asked when taking out her policy. They told him that she was asked the following question: -

"Has your car been modified (other than by the manufacturer, or for disabled use)?"

And she answered 'No' to this question.

Our investigator was satisfied that the Abarth body kit was fitted to Miss R's car after manufacture. So he was satisfied Miss R made a misrepresentation as she gave incorrect information to ITB when she applied for her policy and when her policy was renewed.

But he said he needed to decide if this was a "qualifying" misrepresentation under CIDRA. The test for whether Miss R took reasonable care when answering the questions she was asked is set out in CIDRA. The standard of care required is that of a 'reasonable consumer'. So our investigator said he needed to consider what a reasonable consumer would have done in the circumstances, rather than getting too focused on why Miss R made the misrepresentation.

He said Miss R had told us she was 18 when she bought the car, and she didn't know much about cars. She'd told us she was looking for a practical car that looked good and was fairly new. She'd asked the seller if they'd made any modifications and they'd told her they'd bought it new and the Abarth body kit was already fitted. And she said she had no reason to question this.

Her boyfriend had managed to contact the seller to ask if the Abarth body kit was factory fitted and he'd replied on 24 October 2022 saying that it was.

Our investigator felt this supported what Miss R had been saying. And having listened to the calls between her and ITB he felt she'd been consistent in the responses she'd given, and she'd not tried to hide that the car had been fitted with an Abarth body kit.

Miss R has said that she thinks the engineer who fitted her black box should have notified ITB of the modifications, but our investigator didn't agree. He said it was the engineer's role to fit the tracker, not to report on the car's condition. And he didn't think ITB would necessarily have looked at the photos, as their main purpose was to provide supporting evidence that a tracker had been fitted, should this be needed.

But he did think that the photos supported that Miss R bought the car with the Abarth body kit already fitted. And as Miss R knew the engineer had taken photos, if she knew the car had been modified after manufacture, he felt it was reasonable to say that she would have appreciated that the engineer might report the modifications, or they'd have been noticed by ITB. So he thought it likely she'd have notified them of the modifications if she hadn't thought they were factory fitted at the time of manufacture.

Our investigator said that the Abarth body kit adds some extra trim to the car. It's not a full Abarth conversion. So there was no second exhaust fitted, or enhancements to the engine performance. Based on the photos he'd seen our investigator felt the modifications were minor and not instantly recognisable. He didn't think they reflected a clear and obvious modification which should have led Miss R to question whether they were fitted at the point of manufacture or not.

So he felt Miss R took a reasonable level of care when taking out her policy. He was satisfied that when she answered no to the question had her car been modified, she believed this information was correct.

As our Investigator believed Miss R had taken reasonable care, this meant that under CIDRA there had been no qualifying misrepresentation. So he didn't believe ITB had acted fairly when they voided her policy.

Our investigator also considered the level of customer service ITB had provided to Miss R. He felt this had been poor and this had included sending her a renewal statement for another policyholder. Sending Miss R this document was a data protection breach, so he confirmed that we'd destroyed all record of the document. ITB had asked Miss R to confirm she'd destroyed the document and she's now told us that she's done this. And our investigator said it's not our role to punish or fine ITB for their error, as that's the role of the Information Commission Office (ICO).

Miss R had reported the theft of her car on 3 October 2022. ITB sent her a letter on 24 October 2022 to confirm that their engineer had provided a valuation of £7,925 for her car. Then on 4 November 2022 they wrote to her confirming her policy had been voided.

So our investigator was satisfied that ITB had progressed her claim in a timely manner. But he felt they could have acted on information they received more quickly and could have been

more proactive in contacting her during the complaint process, rather than waiting for her to contact them.

Having said that it wasn't fair for Miss R's policy to have been voided, our investigator recommended that ITB do the following: -

- Reinstate Miss R's policy.
- Process her claim on the basis that her car was insured according to the policy wording.
- Miss R's car had been valued at £7,925. From this he said it was fair for ITB to deduct the refunded premiums (of £445.46 and £766.37), her policy excess of £650, any outstanding instalments for the policy year 2021/22 and any outstanding finance.
- He thought ITB were able to pay Miss R's claim from 4 November 2022. And as she'd been deprived of those funds since then, he said they needed to calculate interest, at 8% simple, on the net claim settlement from this date to the date of settlement and pay this to Miss R.
- Amend any records (including the Claims and Underwriting Exchange (CUE)) to reflect that Miss R's policy wasn't cancelled or voided. But it would be fair for the claim and outcome to then be registered. And ITB must let Miss R know if they do this. He said it's likely this will be recorded as a fault claim. Not because Miss R was at fault but because it's unlikely ITB will be able to recover their costs. And Miss R will need to inform any new insurance provider of any change to how the claim is recorded. And she should be aware that this could lead to her needing to pay a higher premium.
- Pay Miss R the £150 they offered in recognition of the distress and inconvenience she experienced in relation to this matter.

Miss R accepted our investigator's opinion but ITB didn't. They've said the following: -

- Photos taken of Miss R's car on 7 January 2021 show that it's a Fiat Abarth 595 replica with the following modifications – Abarth bodykit, Abarth alloys and hubcaps, Abarth/Scorpion front and rear badges, Abarth 595 side badges on the rear side panels, Abarth double exhaust, Abarth spoiler and Abarth seat.
- They've provided a link to a video clip Miss R posted online in which she refers to the car having a 'loud exhaust'. And to the police approaching her shortly after she bought the car because it was an Abarth replica and these are often stolen.
- When she took out her policy, and at renewal, Miss R was asked if her car had been modified. And her Statement of Fact reminded her that the consequences of giving inaccurate or incorrect information could be her insurance being invalid.
- In his view our investigator refers to an Abarth basket, but for accuracy this should be an Abarth body kit.
- Miss R was aware of the modifications as she told them in an email dated 20 October 2022 that when she set up the insurance she enquired about whether modifications would make a difference to her insurance and she was told they wouldn't. But the policy was set up online so there's no record of any conversation.

- Miss R was made aware by the police a year before she took out her policy with them that her car was an Abarth replica and was aware that it was modified because she thought she'd discussed this with them.
- If there's any doubt that the messages Miss R's boyfriend received were from the seller, they say these should be disregarded.
- They don't accept that the car only had a Abarth bodykit fitted as our investigator has stated. They say that minus the engine, it's had a full Abarth conversion. And they don't agree that the changes made are minor, they say they significantly alter the appearance of the car.
- They don't accept that Miss R took reasonable care when she answered the question she was asked about modifications to her car. They say she was aware the car had an Abarth kit fitted at inception and renewal and later referred to the car as being an Abarth replica.

Miss R has provided some photos of the car which show the modifications including a double exhaust.

ITB have provided copies of photos of an unmodified Fiat 500 as manufactured and details of the original vehicle specifications provided to Miss R by Fiat.

The case then came to me for a decision. I issued my provisional decision on 8 August 2023. And in it I said: -

*From her conversations with our investigator it appears that Miss R now agrees that her car was modified after it was manufactured. Even if she didn't agree, I'd have to say that it's clear that it was, as Fiat have confirmed that they don't supply or fit Abarth body kits. And the car was only factory fitted with a Comfort Kit 1.*

*By Miss R's own admission, she asked the seller at the point of purchase if the car had been modified. This suggests she knew it would make some difference if it had been. It also suggests that there was something about the appearance of the car which made her think it had been modified. She says the seller confirmed the car had been modified, but that the modifications were all factory fitted.*

*I don't think the message Miss R's boyfriend received from the person who sold her the car, adds anything to the case. I accept her evidence that the seller told her the modifications to the car were factory fitted. The issue I need to consider, based on all the evidence, is whether it was reasonable for her to accept this without making further enquiries.*

*Miss R knew that the car was fitted with an Abarth body kit (she calls it an Abarth basket). During one of the calls to ITB after she reported the car as stolen, she confirms the car had been modified and she bought it with an Abarth basket. She was asked to provide evidence that the kit had been factory fitted, as ITB told her they'd not heard of an Abarth body kit being a standard factory fit.*

*When Miss R contacted Fiat they confirmed that the car was fitted with a Comfort Kit 1. She provided the specifications Fiat sent her to ITB and seems to have thought this confirmed the modifications were factory fitted. It's unclear why, as the details provided by Fiat make no reference to an Abarth body kit. Fiat subsequently confirmed to ITB that they don't supply or fit Abarth body kits.*

*Miss R has told us when she bought the car she was 18, it was her first car and she wanted*

*something that looked good and was fairly new so it would be reliable. We've not seen a copy of the advert Miss R responded to when she bought the car. But we do now have a copy of a video she uploaded online. In this she refers to her car having a loud exhaust and to the police approaching her shortly after she bought the car, to check she owned it, as they said Abarth replicas were often stolen. She also refers to 'girls loving Fiat 500s'.*

*Her conversation with the police appears to have taken place about a year before she insured the car with ITB. And from what she said about 'girls loving Fiat 500s' I think it's reasonable to assume she was familiar with the cars and what they looked like. She certainly knew enough about them to ask the seller if the car had been modified.*

*Comparing the photographs Miss R has sent us of her car, with those of a standard Fiat 500 ITB have provided, I think there are obvious modifications. These include the double exhaust, the rear and side Abarth badges (we don't have images of the front of the car) and the Abarth alloy wheels and hub caps. So I don't agree with our investigator about the modifications being minor. And he was wrong when he said the car didn't have a double exhaust.*

*ITB say the car also had also been fitted with Abarth spoilers and an Abarth seat. These modifications aren't so obvious from the photographs I've seen. But I accept ITB's view that save for the engine, the car had been modified so it was an Abarth replica.*

*Although Miss R may have thought her car had factory modifications when she first bought it, when the police spoke to her about the car, she was made aware that the car was an Abarth replica. Even if curiosity didn't at the time mean that she searched for further information about this, I think it would have been reasonable to expect her to make enquiries before she insured the car. Especially given that it's so easy to find information online. And a simple search would have given her enough information to question whether the modifications made to her car were factory fitted.*

*So I don't think Miss R took reasonable care when she answered 'No' to the question she was asked about her car having been modified. And as ITB have provided evidence that they wouldn't have insured the car if they'd been made aware of the modifications, I'm persuaded that she made a 'qualifying misrepresentation' under CIDRA.*

*I think it was reasonable for ITB to treat this as careless misrepresentation. This gave them the remedy of voiding her policy from inception and returning her insurance premiums which they've done.*

*While I accept that photographs of the car were taken when Miss R's black box was fitted, the engineer's job was simply to fit this, and I wouldn't have expected him to report back on any vehicle modifications he'd seen. The car had been accepted on cover and it wasn't the engineer's job to question this. And I also wouldn't have expected ITB to inspect the photographs looking for modifications. They were simply a record of the box being fitted if this was later required.*

*ITB sent Miss R someone else's policy information in response to her SAR request and I think the £150 they offered her for this seems reasonable. Although it's not our role to consider data breaches. It wasn't Miss R's data that was compromised but if she wishes to pursue this she can contact the ICO.*

*I've said that I believe Miss R made a qualifying misrepresentation when she took out her policy with ITB. They've treated this as a careless misrepresentation and as they've refunded her policy premiums I won't be asking them to do anything further.*

So my provisional decision was that I didn't uphold Miss R's complaint.

Since I issued by provisional decision Miss R has provided her comments for me to consider and two brief extracts from calls, one made by her boyfriend and the other by ITB. I've summarised the points she's made below, but if I've not referred to everything she's said, I've read and considered all she's said.

Miss R has said that ITB have an awful reputation for lack of customer service and care. To illustrate this she's provided screenshots of comments made by other customers of ITB about how their claims have been dealt with.

She's said that both I and ITB have said she's lied about the modifications to her car and that she did this to pay less for her insurance. Which she says simply isn't the case and if ITB offered insurance for modified cars, she'd be happy to pay any additional premium. She also says that any reasonable customer knows that lying to their insurers would leave them uninsured and at risk of being in thousands of pounds of debt if they were involved in an accident. So she just wouldn't have taken this risk.

She says I've misconstrued how she's described her car and I've taken her words out of context to fit with the view that she lied on her policy. She says she's never admitted that her car was modified. She's never used the term 'Arbarth Basket', although she accepts that when she called to report the theft she referred to the car as a 'Arbarth replica', as she didn't know how else to describe it. But just because it's a Fiat with some badges on it doesn't mean it's modified, and she's confused about how this can be used as evidence against her.

She accepts that she knows what a Fiat looks like, but says her argument is that because hers had some differences to a regular Fiat, doesn't mean that these differences were modifications, or that they needed to be declared. And the fact she knows what a Fiat 500 looks like and could see her car differed, is the reason she asked the seller about whether it was factory standard. She doesn't see what else she could have done and says there's no reason why she would have disbelieved him.

Miss R says that I've said that there was something about the car which suggested it had been modified. And I've said she should have taken more care and made more enquiries. But she says she did this and asked at the point of sale if the car was factory standard. Which she says I'm now using to say that she knew the car had been modified. She says this isn't the case. She says she could see the car didn't look like a regular Fiat, and that she obviously knows what one looks like. She didn't know if the badges etc were factory standard, so she was checking with the seller so she could insure it correctly. She says that just because the car didn't look like a regular Fiat, it doesn't mean that the differences were modifications. So she says she asked the questions she should have.

She also says she doesn't understand why I've set out the consequences of misrepresentation when she was renewing her policy. She believed she was telling the truth so there was nothing for her to declare.

Miss R doesn't agree with my comment that the seller telling her boyfriend three years after she bought the car that the car was a factory standard model isn't relevant. She believes this confirms that she was telling the truth about what he told her.

In respect of her conversation with the police about her car, she says they didn't tell her the car was an 'Arbarth Replica'. They simply questioned the modifications and as the seller had told her, she told them the car wasn't modified, it was factory standard. They were questioning her ownership of the car as they said they're often stolen. And she says they couldn't make her aware that the car was a 'Arbarth Replica', as they were police officers,

not car experts or engineers.

She says that after the conversation with the police she spoke to her then insurers, to check she was insured correctly, and was told her policy was fine and there were no modifications to declare. So she did what was needed to ensure her car was correctly insured, and she doesn't understand how I can agree there's been a careless misrepresentation.

She's provided an extract from a call she says her father made to the insurers. In this call he says that the car is as it came out of the factory and is told 'That's not a modification then'. She says they told the insurers all they knew and this shows she made all the necessary enquiries so she can't have made a careless misrepresentation.

In respect of the Comfort Kit 1 Fiat confirmed had been fitted to the car, I'd commented that Miss R seems to have thought this confirmed that all the modifications were factory fitted. She's says this is what she thought, and this was entirely reasonable, as she had no idea what a Comfort Kit 1 was, and neither did the engineers from ITB. And she says an 18- or 19-year-old girl couldn't be expected to know what this kit was. She's provided an extract of a call ITB made to Fiat asking them what the Comfort Kit 1 consisted of.

Miss R says that she can't recall telling us that she accepted her car had non-factory fitted modifications.

In respect of the data breach she says she only wanted to keep the information she was sent as evidence of the data breach during her complaint. But she deleted it straight away after this. And she's never received the £150 compensation ITB were supposed to send her.

She's said she believes she made all the necessary enquiries she could and it's unfair for me to say she should have done anything more. And she's provided more information about the impact this claim has had on her and the stress and anxiety this has caused her.

### **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 considered all Miss R has said about the impact this claim has had on her and I've listened to the extracts of the calls she's sent. She's told us that she relied on the information given to her when she bought the car that any modifications were factory fitted. And that three years on from when she bought the car, the seller when contacted still said that the modifications were factory fitted.

She's made much of the fact that she was young when she bought the car and didn't have much knowledge about cars in general. But she's said she liked Fiat 500s and that she knew what these looked like. From the photographs she provided the car looks very different to a standard unmodified Fiat 500. The most obvious difference being the double exhaust, but it also has the Abarth badges on the rear and sides, and I assume also of the front, although I can't confirm this as she hasn't been able to provide a photograph of the front of the car. The car also had Abarth spoilers and a driver's seat.

While Miss R says she made all the enquiries she could I don't think that's entirely correct. Her conversation with the police took place after she'd bought the car and some time before she insured it with ITB. And I think that even if before this conversation she wasn't aware that her car wasn't a standard model, she was put on notice at that point that it wasn't. She says that her father called her then insurers who confirmed that there were no modifications she needed to declare.



The extract of the call her father made is very brief and he states that all the modifications were factory fitted. He is told that on that basis there are no modifications to declare. But he made no mention of the car being an 'Abarth' or an 'Abarth Replica'. If he had he might have been given different information, as we know that Fiat have confirmed that they don't factory fit Abarth modifications. While Miss R has said the police aren't car experts, they recognised the car as an Abarth, this was the reason they spoke to her. And yet this isn't mentioned in her father's conversation with the insurers.

I accept what Miss R has said about ITB not being aware of what the Comfort Kit 1 which had been factory fitted to her car consisted of. But this doesn't alter the fact that there had been modifications done after this.

Miss R has said that she doesn't recall saying that she accepted her car had non factory fitted modifications. Our records show that she spoke to our investigator on 15 May 2023 and during that conversation said she now agreed that her car had been modified and these modifications weren't factory fitted.

When she took out her policy with ITB Miss R was entering into an insurance contract with them. She can't simply rely on what the seller told her, if there's information available to her which suggests that this wasn't correct. And I think there was enough information available to her to make her question whether the modifications to her car had been factory fitted.

In the extract of the call Miss R's boyfriend had with the seller, he simply asked if the modifications were factory fitted. There's no reference to Abarth modifications, even though at this time Miss R knew, or ought to have known, that the car was a Fiat Abarth.

Miss R says that I've said she lied to get cheaper insurance and she wouldn't have done this, as she knew the potential consequences of not having valid insurance. This isn't correct. What I've said is that Miss R was entering into an insurance contract and CIDRA says she needed to take reasonable care in answering the questions ITB asked. And based on the evidence I'd considered, for the reasons I've given, when she answered 'no' to the question whether her car had been modified I don't think she took reasonable care.

I've considered what Miss R has said about ITB's reputation and the comments she's found about them and the level of customer service they provide. But I'm looking at this case based on the facts of the case and the available evidence, not on other people's opinions of ITB.

I understand the impact that this case has had on Miss R and I appreciate how difficult this has been for her, particularly as this was her first car. But she made a qualifying misrepresentation when she took out her policy with ITB. They've treated this as a careless misrepresentation, which I think is fair, and as they've refunded her policy premiums I won't be asking them to do anything further.

Miss R has said she's not received the compensation ITB offered her in respect of the data breach on her case. It's not acceptable that this hasn't been paid and I've asked our investigator to contact ITB to tell them to contact her to make arrangements to make this payment to her.

### **My final decision**

For the reasons set out above and in my provisional decision, my final decision is that I don't uphold Miss R's complaint about Aioi Nissay Dowa Insurance UK Limited trading as Insure the Box.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 5 December 2023.

Patricia O'Leary  
**Ombudsman**