

## **The complaint**

Mr R has complained about KGM Underwriting Services Limited. He isn't happy that it turned down his claim and avoided his motor insurance policy.

## **What happened**

Mr R took out a motor insurance policy with KGM through a comparison website using webchat and changed the car on cover midway through the policy which renewed at a later stage. He made a claim under the policy after he was involved in an accident after losing control of his car.

KGM looked into the claim and decided Mr R's car was a write off and offered him market value. But when Mr R challenged the valuation of his car KGM said he'd answered the question it asked about modifications to his car incorrectly. And it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid his policy, decline his claim because of this and keep the premium he'd already paid.

As Mr R wasn't happy about this he brought his complaint to this Service and our investigator didn't think it should be upheld. Although she had some sympathy for Mr R and understood that the car had previously been written off she agreed there had been a qualifying misrepresentation and agreed it was deliberate or reckless and that KGM were entitled to avoid his policy and retain the premium he'd paid.

As Mr R didn't agree with the investigator the matter has been passed to me for review.

## **What I've decided – and why**

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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.

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

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 misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

KGM thinks Mr R failed to take reasonable care not to make a misrepresentation when he stated during his change of vehicle that his car didn't have any modifications when it did. And he didn't tell it at renewal about the modifications when his renewal documentation made it clear that it was based on the fact that his car wasn't modified as well. And I've looked at the question he was asked when he changed vehicles and at renewal and I agree he failed to take reasonable care. This is because he was asked if his new car had any modifications and he didn't tell KGM that it had been modified. I think this was a clear question asked by KGM and, importantly, it was clear in the statement of fact at renewal that the policy was based on his car not having any modifications.

Mr R said that his new car didn't have any modifications because he wasn't aware that it had been modified and suggests that there would be changes to his car as it was previously a Category D write off. But I've listened to a call between Mr R and one of KGM's case handlers and he's asked whether his car has been modified in any way. He said that he had changed the brakes and goes on to say that the car has a rear spoiler and skirts. And when he was questioned further he explains that he placed skirting on the car and when specifically asked if he did this himself he said '*Yes, I did yes*' before going on to say he did it a few months ago.

Mr R also acknowledged when pushed during the call that he had changed the wheels on his car after one was damaged. Mr R apologised that he hadn't mentioned this before saying the car '*does have 19-inch alloy wheels*' which he said he changed a few months before the accident as well. So, Mr R has said that he changed parts himself and acknowledged that he was aware that his alloy wheels weren't standard although they were the same width.

I do appreciate that Mr R may not have fully realised all the parts KGM has identified were modifications and not standard. But, I think he was aware, at the very least, that the wheels weren't standard. I've seen pictures of the new wheels compared to the standard wheels and they are clearly different, including non-manufacturer markings on the new wheels and Mr R acknowledged during the call that he knew they were different. And so, I think this means Mr R failed to take reasonable care not to make a misrepresentation when he said his car wasn't modified when in fact it had a number of modifications.

KGM has provided evidence which shows that if Mr R had not made this misrepresentation it wouldn't have insured and provided cover. This means I am satisfied Mr R's misrepresentation was a qualifying one.

I also think Mr R's misrepresentation was a reckless or deliberate misrepresentation. This is because I think Mr R must have realised that his car was modified given what he said during the calls and his general knowledge about this particular make and model of car. I appreciate he's said his car was previously a Category D, but he has acknowledged that there were some modifications to his car and that he undertook some changes himself (including adding full skirts all-round the car and replacing the non-standard alloy wheels).

Therefore, I'm satisfied KGM was entitled to avoid Mr R's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, KGM does not have to deal with his claim following the accident. And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing KGM to rely on it to avoid Mr R's policy produces the fair and reasonable outcome in this complaint.

Turning to the way Mr R's claim was handled I agree that KGM could've dealt with things better. I can understand why Mr R has found the way it dealt with the claim frustrating and he must have been disappointed that it said it was going to pay the claim only to change its position. But KGM's engineer looked at his car and identified various modifications and although it is a shame that KGM communicated with Mr R incorrectly in the meantime I think its conclusions are fair. And so, Mr R has only faced the loss of expectation of getting his claim paid as opposed to anything else so I'm not awarding compensation for this.

Finally, I note that Mr R would like the salvage (his car) back from KGM which is understandable. However, as our investigator explained there are procedures in place for the return of salvage depending on the category which he will have to follow. I'll leave Mr R to advance this with KGM.

### **My final decision**

For the reasons set out above, I've decided not to uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 7 August 2023.

Colin Keegan  
**Ombudsman**