

## Casebooks

The ISO still has casebooks available for complaints investigated between:

- 1 January 2000 and 31 December 2000 (CD Rom also available);
- 1 January 2001 and 31 December 2001 (CD Rom also available); and
- 1 January 2002 and 31 December 2002.

While the ISO strives for consistency in decisions issued by this Office, it is important to recognise that individual case summaries do not set precedents. Each case is considered on its facts in accordance with the law, any applicable Code and good insurance practice.

We have included an order form in this *Assessment*, which can be posted or faxed back to us. (Please note that each Participant and nominated consumer groups will have already received a copy of each casebook free of charge).

## Useful Consumer Information

### Modifications to Vehicles

When motor vehicle insurance is being arranged, insurers require information regarding whether the vehicle has been modified. There is usually a question on the proposal/application requiring details of modifications and, if cover is arranged by telephone, similar information is requested.

However, what exactly does the term “modifications” mean and what information do insurers really require of consumers in relation to them? The simple answer is that insurers want to know about changes to the vehicle, which alter it from the manufacturer’s original specifications for the particular make and model of vehicle.

The reason insurers want to know about modifications is to determine whether they wish to accept or continue insuring a particular risk, having regard to such factors as the type of vehicle, the nature of any modifications and the age and experience of the driver. Simply put, some modifications can substantially alter and increase the risk presented or as originally understood by the insurer. A powerful vehicle, which has been extensively modified in terms of performance, being driven by a young and inexperienced driver, statistically presents a very high risk to insurers.

Why then are so many policies avoided for non-disclosure of modifications and, as a result, claims unable to be paid?

What is a “modification” as referred to by an insurer? Modifications can be categorised as follows:

1. Those which enhance the performance of the vehicle.
2. Those which are attractive to thieves and which affect the security of both the vehicle and any accessories within it.

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*In this publication, the Insurance & Savings Ombudsman is referred to as the ISO. In the case studies, the letter “P” is used to denote Participant and “C” to denote Complainant.*

### Assessment mailing list

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## Problems for consumers

- ***Understanding what needs to be disclosed***

Our experience is that, in considering the insurer's requirement for disclosure of modifications, consumers only think in terms of those modifications which affect a vehicle's performance, such as a larger engine fitted, modified air intakes, exhaust system and racing suspension.

Consumers often do not consider additions or accessories, which do not affect the vehicle's performance, as "modifications". Alterations and additions (such as mag wheels, spoilers, body kits and special paint jobs) make the vehicle more attractive to thieves and, therefore, a greater risk for an insurer.

Special mention must be made regarding the fitting of expensive stereo systems, some of which are worth more than the vehicle itself. This is regarded as a very important modification, which increases the risk of theft of the vehicle. Most insurers specifically ask for details of expensive stereos over a certain stipulated value and failure to disclose such a modification is a clear breach of the policy.

- ***When modifications should be disclosed to an insurer***

A further complication is that some people only think of disclosing some modifications, which they may make to the vehicle, subsequent to its purchase. This is notwithstanding that the vehicle might have already been substantially modified when they purchased it second hand.

If a vehicle has been modified when insurance is being arranged, then the modifications should be advised to the insurer at that time. If a vehicle is modified after commencement of the policy, then they must be advised to the insurer at the following renewal of the insurance, unless the policy wording clearly indicates they be advised sooner. In our experience, very few policies do so.

- ***The implications of not disclosing modifications***

Many consumers do not realise that, if they do not tell an insurer about the modifications to their vehicle, any claim may be declined or the policy avoided from inception or renewal. For the consumer, avoidance means that their policy is treated as though it never existed, which can affect other claims they might have made. Avoidance also carries with it a stigma, which often affects a consumer's attempts to get insurance in the future.

## How can these problems be remedied?

It is clear to us that some insurers could do a lot more to assist and advise their customers regarding the type of modifications they wish to know about. The question which is asked by telephone, or which appears on proposal/application forms, is usually very general and does not provide guidance about the type of changes to the vehicle, which should be disclosed.

As already explained, there is a perception that only modifications which fundamentally change the vehicle's original performance specification should be disclosed. We believe the nexus between some types of modifications, such as an expensive stereo system and mag wheels with the increased risk of theft as a result of fitting these items, should be explained to consumers. Best practice suggests that questions on modifications are for insurers to make clear and not for the public to try to interpret.

Our experience is that insurers expect modifications to be advised when they are made, yet the policy wording does not convey this requirement. If insurers want modifications to be

### ***Case Study 1***

In March 2003, C arranged insurance for his vehicle with P. In July 2003, C's vehicle was stolen. C reported the theft to the police and made a claim to P for the theft of the vehicle.

P's enquiries indicated that some modifications had been made to the vehicle in the 2-3 weeks prior to the theft. P avoided the policy from the date the modifications were made and declined to consider the claim.

C argued that the non-performance enhancing modifications did not affect the policy and believed that P should have paid the value of the vehicle, excluding the modifications.

When C took out cover, the bank officer asked him if the vehicle had been modified. The Case Manager believed that C's attention had been drawn to the importance of information about modifications. C argued that he had intended to advise P about the modifications, but he had been very busy.

The policy specified "*If any relevant circumstances change or may change during the time we provide your insurance then you must tell us... if we are not told we have the option to decline any claim, or avoid this policy from the date of change*". The Case Manager believed that the policy did not require C to tell P about the modifications immediately and it was a question of what would be a reasonable period of time, for the notification of changes. The Case Manager considered the fact that the modifications did not occur without some planning. Therefore, the Case Manager believed that 2-3 weeks was more than enough time for C to have advised P of the modifications.

The Case Manager found that, prior to P knowing about the modifications, it had already imposed special terms, such as an additional \$1,000.00 excess on C and an exclusion of cover if the vehicle was driven by, or under the control of, C's father. Therefore, the Case Manager believed that C was already aware that the insurance was subject to special terms and conditions.

The Case Manager believed that P's decision to discontinue cover, because of the modifications, appeared to be consistent with its previous underwriting decision when it decided whether or not to accept the insurance and, if so, on what terms.

*Complaint not upheld*

advised “when they are made”; “as soon as possible”; or “immediately”, we believe the policy should clearly state this requirement.

If an insurer wishes to avoid a policy for non-disclosure (of modifications), the common law position is that avoidance is from inception or renewal of the policy. However, the common law position can be over-riden by very specific policy wording which makes the consumer’s duty to disclose modifications more onerous, or imposes an on-going duty throughout the period of insurance.

Best practice suggests that insurers, as the parties wanting to obtain the information, are in the best position to make it clear what they want to know and when, rather than relying on consumers to be proactive in advising of any modifications. It might also assist consumers by asking them to check with their insurers before making major modifications, to ascertain if such modifications will change the terms of the policy.

Some vehicles are ex-factory with so called “modifications” already fitted – why is this different to a model which has the modifications fitted later? The answer is that the insurer is always concerned about changes to the vehicle’s original specification. Modifications fitted at the factory are “standard” to the particular model.

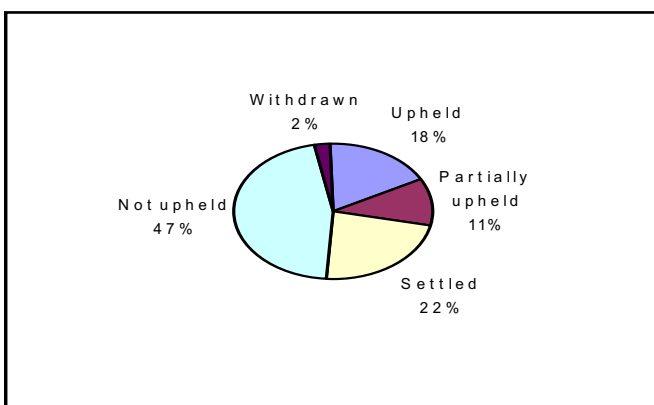
Clearly there are some changes involving fitting of accessories, which will not be material to an insurer and need not be disclosed, such as fitting a tow bar, monsoon shield, or headlamp covers. However, our main concern is that consumers are sufficiently alerted to the need to disclose modifications and the type of modifications, which must be disclosed. This is so that, if consumers are in any doubt about any aspect of modifications, they can clarify this with the insurer concerned.

## Complaint Questionnaire Results

In order to improve the ongoing monitoring of our process and to evaluate our performance, the ISO sends each Complainant a questionnaire to voluntarily complete, upon closing their file. The questionnaire is important in terms of receiving feedback about our process and the internal complaints procedures of the Participants.

From 1 January 2003 to 31 December 2003, we formally investigated and closed 261 complaints. We received 83 responses to the questionnaire from 1 January 2003 to 31 December 2003.

- **Outcome of complaints in relation to questionnaires responded to**



- **Information generally**

The questionnaire asked the Complainants how they found out about the ISO. The majority of Complainants learnt about the ISO through family and friends, or Participants.

### Case Study 2

In May 2000, C insured her vehicle with P. At the commencement of the policy, the vehicle did not have standard tyres and had mag wheels. By the first renewal of the policy, C had added a momo steering wheel to the vehicle. By the second renewal, C had modified the vehicle with the addition of a Clarion CD player, 2 amplifiers and 2 speakers.

In early 2003, the vehicle was stolen and C made a claim to P for the theft. P declined the claim and advised as follows:

*“As you were required to advise [us] of the installation of the stereo when it was installed...the policy will be voided effective 14 days from the estimated installation date...It is understood that an accurate installation date can not be determined, in light of this the policy will be cancelled effective 12 months prior to the vehicle being stolen (27<sup>th</sup> January 2003). Addition of 14 days notice is also required here making the policy cancellation date 12 February 2002.”*

The Case Manager believed P could not retrospectively cancel the policy and nor could it “void” the policy mid-term, as it had purported to do in other communications with C. As a correct reason for declining the claim had not been communicated to C, the Case Manager believed P should meet the claim.

The Case Manager discussed this with P and P agreed to meet C’s claim.

*Complaint settled*

### Case Study 3

C’s vehicle was stolen from her property and she made a claim to P for the theft. P’s investigator interviewed C and her son and they provided signed statements. The statements revealed that the vehicle, which was owned and driven by C’s son, had been modified.

P avoided the policy from the commencement of cover and declined to consider the claim.

P stated that C had not disclosed modifications to the vehicle, when C completed the proposal. C argued that the question on the proposal relating to modifications was ambiguous and the word “modification” only related to a change in the structure of the vehicle.

- **Information – from Participants**

39 of the 83 responses indicated that they had received enough or more than enough information relating to the company’s own internal complaints procedure from the Participant, while 57 indicated that the Participant had provided enough or more than enough information about the ISO Scheme. Of great concern are the 18 who indicated they received no information regarding the company’s internal complaints procedure from the Participant and 12 who stated they received no information regarding the ISO Scheme.

- **ISO’s investigation**

Only 58 Complainants gave an indication of how long the ISO had taken to make a decision, with over half of them indicating that it had taken 4 months or longer. While the performance measure adopted by the ISO Office is 90 days (3 months), it is important to note the impact of the increased number of life and disability related complaints on the average time taken to resolve a complaint. This is carefully monitored on a monthly basis by the ISO Office, independently of the questionnaire.

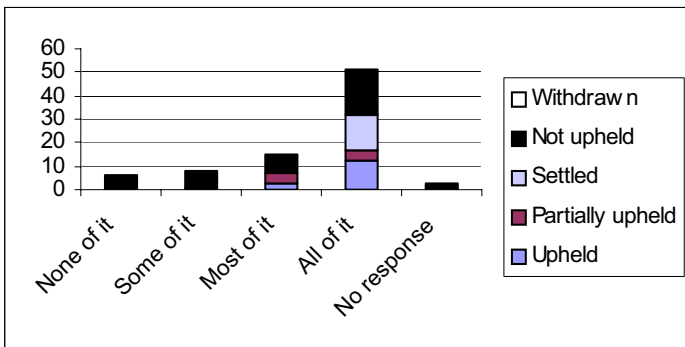
Most Complainants believed that the ISO’s investigation was thorough, with 64 of the 78 responses stating that the investigation was adequate or better.

- **Case Managers’ communication**

Overall, the perception of the Case Managers’ oral communication was that it was good, with 67 of the 73 responses stating that it was adequate or better. The perception of the Case Managers’ written communication was also good, with 64 of the 74 responses stating that it was adequate or better. Some Case Managers were specifically named as having given particularly good service to Complainants.

- **The decision**

66 of the 80 responses indicated that they understood most or all of the decision. Only 6 of the 80 Complainants stated that they did not understand the decision at all.



- **The ISO Scheme**

Complainants were asked how easy they found it to use the ISO service, with the majority finding it easy or very easy.

When asked how the Complainants felt about the service provided by the ISO, any negative comments reflected complaints which were not upheld. Many of the comments were positive, including the following:

- *“Brilliant! Keep up the good work!”*
- *“The ISO are pure magic and what you have help[ed] us with, through-out our claim we are very greatfull (sic) for what you have done for us many thanks”.*

The Case Manager believed the policy provision relating to modifications did not impose a continuing duty of disclosure. Therefore, because P was avoiding the policy ab initio, the only modifications which P could rely on were those which existed at the commencement of the policy. On this basis, the only modifications which C could have disclosed when she completed the proposal, were 14” Avanti mags (“the mags”) and 205mm rotational tyres (“the tyres”).

The Case Manager’s investigations established that the tyres and the mags were not factory standard for the vehicle. The Case Manager determined that the information about the modifications was material and should have been disclosed to P.

*Complaint not upheld*

#### **Case Study 4**

In August 2001, C insured a vehicle with P. In December 2001, the vehicle was stolen from outside C’s house. C made a claim to P for the loss.

In the course of the interview with P’s investigator, C disclosed a 1997 claim for another vehicle. C had not disclosed finance on the vehicle at the commencement of the policy. C also told the investigator that the vehicle was heavily modified and he had provided details of the modifications to P’s customer services representative when he arranged the insurance with P.

P avoided the policy and declined to consider the claim.

C had provided a letter from P’s customer services representative, which suggested she was aware the vehicle had been restored, although she did not appreciate the extent of the modifications.

The Case Manager noted that P was unable to produce a copy of the application questions asked or C’s answers to them. Therefore, the Case Manager was unable to determine whether C failed to disclose the 1997 claim or the extent of the modifications at the inception of the policy.

Because there was a lack of evidence, the Case Manager did not believe P was entitled to avoid the policy on the basis of non-disclosure of information on the application.

*Complaint upheld*