

## **The complaint**

Mr W has complained that Advantage Insurance Company Limited unreasonably refused to pay his claim and cancelled his motor policy as if it never existed, because he didn't declare his named driver's motor convictions.

## **What happened**

Mr W was involved in an accident in November 2021. In validating his claim, Advantage found out that Mr W hadn't disclosed his named driver's (who was his father) motoring convictions for speeding.

Advantage said this was a qualifying misrepresentation under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) and on that basis it was entitled to cancel Mr W's policy as if it had never existed and refund him the premium he had paid. This also meant he wouldn't deal with his claim.

Mr W thought this was very unfair as his father wasn't involved in the accident. Advantage wouldn't change its stance, so he brought his complaint to us.

The investigator was of the view it should be upheld. Advantage didn't agree so Mr W's complaint has 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.

Having done so, I'm upholding this complaint. I'll now explain why.

CIDRA imposes duties on both the insurer and the consumer. For the consumer it is to answer all the questions asked on the application truthfully and honestly so as to take reasonably care not to make a misrepresentation. And for the insurer, the questions asked must be clear and unambiguous.

Certainly, as detailed in the investigator's view the questions Advantage asked were clear as it specifically asked if the named driver had any driving related convictions, endorsements, penalties, disqualifications or bans in the past five years. Sadly, Mr W's father did have speeding convictions with the last five years and Mr W didn't disclose them. This means under CIDRA because Advantage have shown us that it wouldn't have insured Mr W's father as a named driver with these speeding convictions, this is a qualifying misrepresentation. And I agree it would be classed as careless one, rather than deliberate.

On this basis Advantage thought it was entitled to cancel the policy as if it never existed and refund the premium Mr W paid. But under CIDRA, the insurer can only do this if it can show it wouldn't have offered to insure Mr W too, not just his father. However

Advantage has shown us that it would have accepted Mr W's application, just not with his father given the speeding convictions as a named driver.

On that basis our considered stance is that it's not reasonable or fair to cancel Mr W's policy and the cover it provided in circumstances like this. It was Mr W who was involved in the accident and it was his car that was damaged. His father had nothing to do with this at all and wasn't involved. Therefore, I consider all that was reasonable for Advantage to do was to remove Mr W's father from cover and adjust the premium accordingly. So, it's on this basis that I consider this complaint should be upheld.

I've read Advantage's arguments that the misrepresentation concerns the terms of the policy. However, if which is the case, it would have insured Mr W, on his own, without his father as the named driver, it is disproportionately unfair to take advantage in withdrawing all cover in the manner it wished to. Therefore, it is more reasonable if it continues to insure Mr W. If Mr W's father had been the one involved in the accident, then I would have most likely agreed with the stance Advantage wished to take.

So, Advantage should now readjust the premium. If the premium would have been lower than what Mr W was going to pay, it should consider paying the claim in full subject to the remaining terms and conditions of the policy. If the premium would have been more expensive than what Mr W was going to pay, Advantage remains within its right under CIDRA to consider paying the claim proportionately to the increased premium. Obviously since Advantage refunded the premium Mr W had paid, the premium amount plus of course the excess should be deducted from any settlement amount.

Whilst it wasn't Advantage's fault that Mr W didn't answer the questions asked truthfully and honestly, the fact that it didn't simply remove his father and readjust the premium and deal with his claim, did cause Mr W some considerable inconvenience and upset. I consider the £200 compensation suggested by the investigator to be reasonable and in line with other awards I have made in similar circumstances.

### **My final decision**

So, for these reasons, it's my final decision that I uphold this complaint.

I now require Advantage Insurance Company Limited to do the following:

- Reinstate Mr W's policy with the premium adjusted, given the removal of his father as a named driver.
- Reconsider Mr W's claim in accordance with the remaining terms and conditions of the policy with a view to paying it.
- If the premium would now be higher than what Mr W had agreed to pay, Advantage can deal with his claim on a proportionate basis as detailed in CIDRA. If the premium would be lower it should deal with his claim in full. The premium and the excess should also be deducted from any payment.
- Pay Mr W the sum of £200 compensation for the inconvenience and upset of cancelling his policy as if it had never existed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 September 2022.

Rona Doyle  
**Ombudsman**