

The complaint

Mrs W complains that Advantage Insurance Company Limited only paid part of her claim.

What happened

Mrs W's insurance policy was renewed with Advantage Insurance around October 2020. During the previous policy year, Mrs W added an additional driver to the policy, who was also included during the renewal. Mrs W later made a claim after her car was stolen from outside her home.

Advantage Insurance said that, at the time of renewal, Mrs W hadn't declared that the additional driver had an endorsement added on their licence during the previous policy year. So, under the relevant law, the insurer said it was entitled to settle the claim in proportion to the level of premium Mrs W actually paid – instead of what she would've paid had the endorsement been declared. Advantage Insurance says Mrs W only paid 61% of the reviewed premium, so it would only pay out 61% of the settlement.

Advantage Insurance later established that it had incorrectly paid a higher settlement figure instead of the proportionate amount it intended to pay – the insurer valued the car at around £54,000, but paid Mrs W's finance settlement figure of around £49,000 (instead of the circa £33,000 it intended to pay). Although the insurer said it would attempt to recall the over payment, my understanding is that it has been unable to do so.

Advantage Insurance also recognised poor claim handling and service issues across several months of the claim. So it decided to pay Mrs W a total of £205 compensation.

Mrs W brought her complaint to us as she wants the insurer to pay the claim in full. At this point, Advantage Insurance told us that it wouldn't have insured the additional driver at all, so it would've looked to void the policy in these circumstances. The insurer added that, by partially settling the claim instead, Mrs W has received a favourable outcome to her claim.

Our investigator concluded that Advantage Insurance had acted unfairly. The investigator referred to the relevant law and the insurer's evidence to conclude that Advantage Insurance wouldn't have covered the additional driver at all. The investigator pointed out that, under the rules and in these circumstances, the policy can only be voided if it wouldn't have been offered by the insurer on any terms at all.

The investigator was satisfied that Advantage Insurance would've covered Mrs W as the sole policy holder and asked the insurer to provide us details of the premium it would've asked Mrs W to pay, if she was the only insured party. Advantage Insurance was unable to provide this information. The investigator couldn't therefore make a finding on whether the proportionate settlement was fair and so decided that Advantage Insurance should've paid the claim in full.

Advantage Insurance didn't agree – so the complaint has been passed to me for a final review.

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.

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.

Advantage Insurance says Mrs W failed to take reasonable care because she didn't update the insurer to let it know that the additional driver had an endorsement on their licence. Advantage Insurance points out that the renewal documents prompted Mrs W to notify it if any information was inaccurate.

From the information the insurer provided, I can see Mrs W added the additional driver during the policy year 2019-2020. The renewal documents for the year 2020-2021 prompts Mrs W to check all the information and inform the insurer of any inaccuracies. The policy terms also remind Mrs W of her duty to take reasonable care. Additionally, the statement of insurance specifically points to endorsements that the insurer needs to be made aware of. It seems the additional driver received an endorsement in 2020 – Mrs W didn't inform Advantage Insurance of this at the time of renewal, so I'm satisfied she didn't take reasonable care not to make a misrepresentation.

For Advantage to take any action at all, it needs to show it either wouldn't have offered the policy at all or would have done so on different terms. Advantage Insurance hasn't been consistent in its stance when explaining what it would've done differently had Mrs W notified it of the additional driver's endorsement. The insurer says it wouldn't have covered the additional driver, but also adds that Mrs W only paid 61% of the premium - based on what the premium would've been had she not made the misrepresentation. However, this second stance seems to include the additional driver on the policy.

The underwriting data the insurer has provided is enough for me to conclude that Advantage Insurance wouldn't have covered the additional driver at all. So I'm satisfied this was a qualifying misrepresentation. Advantage Insurance hasn't indicated whether it thinks Mrs W's misrepresentation was deliberate or reckless, or careless. By paying the claim on a proportionate basis, Advantage Insurance appears to have decided that Mr W's misrepresentation was careless – I think this is fair in the circumstances.

CIDRA sets out the remedies available to Advantage Insurance where the misrepresentation was careless. The insurer says it looked to void the policy but decided instead to pay a proportionate settlement based on the premium Mrs W had paid. But I think the insurer acted unfairly here. CIDRA says the insurance contract can only be voided because of careless misrepresentation, if the insurer wouldn't have offered the policy on any terms at all. And while CIDRA says an insurer needs to settle claims proportionately where there's been careless misrepresentation, Advantage Insurance hasn't been able to demonstrate that

Mrs W paid a lower premium than she should have, so it's not fair and reasonable for the insurer to settle the claim proportionately – I'll explain further.

Mrs W was the main insured party and her car insurance policy for the previous year was with Advantage Insurance as the underwriter. I can see from the documents that there were no changes to Mrs W's details around the time of renewal – she was insuring the same car, living at the same address etc. So I think it's likely that the insurer would've been in a position to cover Mrs W only. So I'm satisfied that Advantage Insurance could have offered the policy on different terms and, in my opinion, it would've been fairer for the insurer to treat the policy as if the additional driver had been removed. This is also in line with this service's established approach to these types of complaints.

It's unclear whether removing the additional driver would've resulted in a difference in premium. We asked Advantage Insurance to provide a figure, but it was unable to do this. So I'm unable to conclude that Advantage Insurance's decision to pay the claim in part is fair and proportionate to the premium that Mrs W paid – as I don't have the required premium information to check this against. Given the insurer says it can't generate a retrospective premium, I think the fairest approach here is for it to treat the policy premium as paid in full and pay the remainder of the claim.

I've already pointed out that Advantage Insurance overpaid the claim in error. But because it didn't settle the claim in full, Mrs W is still due the remaining amount – so I think Advantage Insurance should now settle the claim in full and pay this amount. The difference between what the insurer paid and the valuation of the car is £5,877.33, so I'll be instructing Advantage Insurance to pay this amount to Mr W. And given Mrs W was left out of pocket of this sum since the claim was paid, I'll also be including statutory interest in the award that I make.

Mrs W also complained about delays and poor levels of service from the insurer. Advantage Insurance seems to have recognised where it could've handled things better. It points to unnecessary delays and poor communication on its part and paid Mrs W a total of £205 compensation. I think this fairly compensates Mrs W for the inconvenience the insurer caused her – so I won't be making a further compensation award.

In summary, I think the insurer acted fairly by concluding that Mrs W misrepresented information about the additional driver. However, Advantage Insurance acted unfairly by settling the claim in part. The insurer should've followed CIDRA and amended the policy to remove the additional driver. Given that Advantage Insurance couldn't provide us with an updated premium, I can't fairly conclude that a proportionate settlement is reasonable. So I've decided to instruct Advantage Insurance to settle the claim in full.

Putting things right

Advantage Insurance acted unfairly when it only paid part of Mrs W's claim. To put things right, it should pay out the remaining amount of £5,877.33, and include 8% simple interest from the date the claim was originally paid to the date of settlement.

As HM Revenue and Customs requires Advantage Insurance to deduct tax from the interest, if Mrs W requests one, the insurer will need to give her a certificate to show how much was deducted.

My final decision

For the reasons above, I'm upholding this complaint and instruct Advantage Insurance Company Limited to settle this complaint in line with what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 28 October 2022.

Abdul Ali
Ombudsman