

The complaint

Mr J is unhappy Advantage Insurance Company Limited (Advantage) cancelled his car insurance policy.

What happened

Mr J purchased a car insurance policy with Advantage. During the policy application, Mr J said he had nine years no claims discount (NCD). After Mr J purchased the policy, Advantage contacted Mr J to ask for proof of his NCD.

Mr J sent a copy of his NCD to Advantage, however they said this was already being used on a separate policy with Advantage, so couldn't be applied to the new policy at the same time.

If Mr J had said he had zero years NCD rather than nine when taking out the policy, it would have been £124.53 more in premiums. So, Advantage debited this amount (with an additional £30 admin fee) from Mr J's bank account. Mr J was unhappy with this, so he completed a chargeback successfully via his bank. Advantage tried to take the amount again, but as they were unable to, they cancelled Mr J's policy.

Mr J was unhappy with Advantage and approached this service.

Our investigator looked into things and upheld the complaint. She said that she accepted there was an overlap in the periods Mr J was trying to use his NCD across two policies. But she said the first policy wasn't renewed and Mr J should have been able to use his NCD on the second policy at that point, so she said Advantage shouldn't have cancelled his policy.

Therefore, the investigator said Advantage should remove records of cancellation from internal and external databases, refund the cancellation fee and pay Mr J £100 compensation.

Advantage didn't agree and asked for a final decision from an ombudsman.

I reached a slightly different outcome to our investigator, including what Advantage needed to do to put things right. So, I issued a provisional decision, to give both parties an opportunity to comment on my provisional findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I’m issuing a provisional decision. I’ve reached broadly the same outcome as our investigator, but for some additional reasons. And I’ve provisionally reached a slightly different outcome on what Advantage needs to do to put things right. So, I’m issuing a provisional decision to give both parties an opportunity to comment on my provisional findings, before I reach my final decision.

Mr J already had an insurance policy with Advantage when he took out an additional policy for another vehicle to start on 2 August 2021. I’ll call the original policy, policy A. And the second one taken out to start in August 2021, policy B.

When purchasing policy B, Mr J said he had nine years NCD, and this generated the price applicable with that discount, which Mr J went ahead with. After the purchase, Advantage contacted Mr J to ask for his NCD proof.

Mr J submitted his proof of NCD showing nine years. However, this was from policy A which was still live at that time and not due to end for another month – on 4 September 2021. As the NCD were already in use on a live policy, Advantage reduced policy B’s NCD to zero, which generated an additional premium of £124.53 plus a £30 administration fee.

Advantage then took that additional amount from Mr J’s bank account. Mr J was unhappy with this, so he completed a successful chargeback via his bank. Advantage again tried to take the amount, but as this couldn’t be collected, Advantage cancelled Mr J’s policy on 29 November 2021.

However, at the point the policy was cancelled on 29 November 2021, policy A had already ended (on 4 September 2021). So, the NCD were no longer in use on policy A and free by this point to use on policy B.

I agree with Advantage that the NCD were already in use when Mr J first incepted policy B in August 2021. So, I don’t think they acted unreasonably in reducing the NCD applied to policy B to zero at that point, as they were already in use on policy A. However, I don’t entirely agree with the actions taken by Advantage following that, or that they were fair or reasonable.

Mr J said he had nine years NCD when he was actually already using them (and the information he was given at point of sale said they couldn’t be used if they were already being used elsewhere). Therefore, Mr J should have said he had zero NCD when taking out policy B. In the event of a qualifying misrepresentation during a sale, accepting it was careless, an insurer has certain remedies under the relevant law – the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). The remedies in CIDRA in a situation such as this where this is no claim and an insurer would have charged a higher premium is to proportionately settle future claims, or to cancel the policy with reasonable notice.

So, Advantage weren't entitled to collect the premium as that wasn't a remedy available under CIDRA. Instead, Advantage could either have proportionately settled future claims, or cancelled the policy with reasonable notice. We'd only agree it wasn't unreasonable to take the premiums if this is something Mr J had explicitly agreed to with Advantage, outside of the relevant law which applies – CIDRA – and after Advantage had fully explained everything to Mr J.

Whilst technically Advantage could have cancelled the policy under CIDRA (but not on the basis they couldn't collect premiums from Mr J's account) they would need to with reasonable notice, and we would expect Advantage to allow Mr J the opportunity to do so in the first instance, before Advantage went ahead and did so. But this wasn't something that was discussed with Mr J. Instead, Advantage cancelled the policy when it couldn't collect a premium, which it shouldn't have been collecting without agreement in any event.

However, regardless of this, policy A actually ended 33 days after policy B was taken out. The NCD were free to use on policy B at that point. But Advantage didn't recognise this, despite them being the insurer for policy A. So, Advantage should have been aware that policy A had ended. Instead, Advantage went ahead with the action they took in trying to debit the premium – incorrectly, and eventually cancelling Mr J's policy.

In addition, there was only an overlap in the NCD being used elsewhere of 33 days. So, it would only have been 33 days which the higher premium was applicable for. Instead, Advantage – incorrectly – tried to take an additional amount based on 365 days at the higher premium. The correct additional premium for that period would only have been around £11.26, rather than £124.53 (after removing the £30 admin fee) which Advantage was incorrectly trying to take.

So, whilst there was a short overlap where the NCD was being used on both policies, the additional premium for this period only was minimum, and certainly not the amount that Advantage (incorrectly) attempted to deduct from Mr J, which then ultimately resulted in the cancellation of his policy.

Advantage has said that the vehicle on cover under policy A is showing on the Motor Insurance Database as insured elsewhere. Our investigator looked into this point when raised by Advantage. That vehicle has been transferred to a family member of Mr J, who is insuring elsewhere, in their own name, without the use of Mr J's NCD from policy A. So, I'm satisfied that the NCD was free to use by Mr J on policy B when policy A ended – and consequently the only period they weren't able to be used was the first 33 days of policy B.

Advantage has also said Mr J has another policy elsewhere so they say he can't have the NCD to use in any event. However, this is a completely different policy for a different vehicle with its own separately accrued set of NCD. And Advantage accepted this when Mr J took out policy A, and they accepted the separate NCD were free to use then – which then should have been able to be used on policy B when policy A ended.

With this in mind, I don't think the actions Advantage took here were fair or reasonable. Ultimately Advantage shouldn't have attempted to deduct the premium, the premium they tried to take also was far greater than what it should have been as the NCD were available to use 33 days after policy B's start, and the cancellation shouldn't have followed from that based on Advantage not being able to collect that amount (as that amount wasn't due or an appropriate remedy available to Advantage under CIDRA).

When the policy was cancelled, Advantage charged Mr J time on risk based on the incorrect policy premium pro-rata. This is because it was based on the premium Mr J had already paid, plus the amount Advantage – incorrectly - said was due (£124.53 plus a £30 admin fee) for the year divided by the days on risk - plus a cancellation fee.

However, as I say, the NCD were available to use when policy A ended. So, the pro-rata at the higher amount should only have been from start to this point, and the pro-rata should have been for the lower amount from policy A's end to point of cancellation of policy B on 29 November 2021. So, unless anything changes as a result of the responses to my provisional decision, I'll be directing Advantage to recalculate the pro-rata amount Mr J owed and to refund him the difference with 8% simple interest from date of cancellation to date of settlement. I also note that the £30 admin fee was already refunded so doesn't form part of the pro-rata charges.

As I don't think the actions that were taken, which ultimately ended with cancellation of the policy, were reasonable, I'm also minded to say Advantage should be covering the £45 fee associated with the cancellation of Mr J's policy which was also deducted from his refund amount. 8% simple interest should also be added to this amount from date of cancellation to date of settlement. I'm also minded to direct Advantage to remove any records of policy cancellation for non-payment internally and externally.

Mr J has said he no longer has this vehicle (as he has transferred it to his family member) so he doesn't need insurance cover for it anymore. Therefore, Advantage also need to provide Mr J with his proof of nine years NCD, in case he needs it for the future.

In addition, our investigator said that Advantage should also pay Mr J £100 compensation for the distress and inconvenience caused as a result of what happened. I'm also minded to conclude this amount is fair and reasonable in the circumstances. So, unless anything changes as a result of the responses to my provisional decision, I'll also be directing Advantage to pay £100 compensation."

Therefore, I was minded to uphold the complaint in part and to direct Advantage to:

- Recalculate the pro-rata refund amount based on the higher and lower premium when the NCD was and wasn't in use on another vehicle
- Add 8% simple interest from date of cancellation to date of settlement
- Cover the £45 cancellation fee that has been deducted from the refund, with 8% simple interest added from date of cancellation to date of settlement
- Remove all records of cancellation for non-payment from internal and external databases
- Provide Mr J with his nine years NCD proof
- Pay Mr J £100 compensation

The responses to my provisional decision

Mr J responded and accepted the provisional decision.

Advantage responded but they didn't agree. They said under CIDRA 2012 a consumer must take reasonable care not to provide mis-information. They said Mr J had input nine years NCD when it was already in use on another vehicle – and the website said it couldn't be used on more than one vehicle. They said that when Mr J sent proof of his NCD, this is where they discovered it was already in use and they adjusted the premium accordingly.

Advantage recognised that I said in my provisional decision that collecting the premium wasn't a remedy under CIDRA. But they say if a claim had been made there would have been a shortfall in the premium paid which means there would be a shortfall in the claim settlement. And they say this would have outweighed what the difference in premium would have been, so Advantage say they can't agree their approach of taking the additional premium was unreasonable. They say they aren't able to proportionately settle a claim which hasn't occurred, and this is why they charged the premiums, so Mr J wouldn't have been in that position if there was a claim in the future.

In addition, Advantage said Mr J was unhappy with the premium being charged, and there is no evidence to show Mr J would have cancelled the policy if they had given him that option.

Advantage has also said that this service is effectively saying they should have allowed Mr J to use the NCD on two vehicles at the same time, but that wouldn't be treating other customers fairly. They say that whilst I had said the NCD were available to use when the original policy ended, that is besides the point and they question how they could know or do that when the process is automatic. They say Mr J completed a chargeback for the additional premium they collected and as they couldn't collect it again, this is why the policy was cancelled.

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.

And I've carefully thought about the provisional conclusions I reached and the responses. Having done so, my final decision remains the same as my provisional decision, and for the same reasons.

Firstly, I should clarify that Advantage has said that my provisional decision effectively says Mr J should be able to use his NCD on two vehicles at once, but that wouldn't be treating customers fairly. However, this isn't what I've said here, and this is why I've considered the misrepresentation and what should have happened had Mr J declared the correct amount when taking out the policy. I've then gone on to consider the remedies under the relevant Act applicable in cases of misrepresentation. And I've also taken into account the NCD being unavailable and then available in what Advantage needs to do to put things right - so I haven't said Mr J can use his NCD on two vehicles at the same time.

But to be clear, the relevant Act in this scenario and 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.

The first point for me to consider is whether Mr J failed to take reasonable care not to make misrepresentation. I agree that he did as the NCD were already in use on another vehicle (for a short period of overlap) and the sales process told Mr J they couldn't be used on more than one vehicle. So, I accept Mr J failed to take reasonable care not to make a misrepresentation when he said nine years rather than zero (at that specific point).

The next question I need to consider is whether it is what CIDRA describes as a qualifying misrepresentation. That is, would Advantage have done anything differently had they known the correct information. Had Mr J said zero NCD a higher premium would have been charged by Advantage. So, I'm satisfied there was a qualifying misrepresentation.

And it is for Advantage to show the misrepresentation was either deliberate or reckless, and if they haven't, then it is treated as careless. I'm not persuaded here that Advantage has shown Mr J's qualifying misrepresentation was deliberate or reckless – so I'm satisfied it should be treated as careless.

Under CIDRA, there are a number of remedies an insurer can take in the event of a careless qualifying misrepresentation – and here, where a higher premium would have been charged. These include both if a policyholder is in a claim situation or not. Mr J wasn't in a claim situation. So, in summary, the applicable remedies under CIDRA for the position Mr J was in were:

- Proportionately settle future claims
- Terminate the contract with reasonable notice to the consumer

These remedies, for the situation Mr J was in, don't include taking the additional premium that would otherwise have been charged. But that is what Advantage did - without Mr J's agreement.

Instead, under CIDRA, Advantage could either proportionately settle future claims or cancel the policy with reasonable notice (but our service would expect a consumer to be given the opportunity to cancel the policy first). But this wasn't an option given to Mr J. So, I'm satisfied that Advantage acted outside the remedies available to them under CIDRA by taking the additional premium.

I would only agree it wasn't unreasonable for Advantage to take the premiums if this was something Mr J had explicitly agreed to outside of the relevant Act which applies – CIDRA – and after Advantage had fully explained everything to Mr J including the options and available remedies.

Instead, Advantage took a premium they weren't entitled to under the relevant Act or remedies which applied. Mr J then did a chargeback, and Advantage then cancelled the policy when they were unable to re-debit the premium. But for the reasons explained above, Advantage shouldn't have been trying to collect the premium in any event.

So, I don't think Advantage acted fairly or reasonably, or in line with the remedies available under CIDRA.

As I explained in my provisional decision, when Advantage tried to re-debit the additional premium (which wasn't an option under CIDRA), the NCD were no longer in use on another vehicle. So, they were free to use on the policy in question here.

Therefore, the additional premium would only have been applicable for the first 33 days, as the nine years NCD would have been available for the remaining eleven months of the policy. So, the amount Advantage were trying to collect wasn't the right amount either. And Advantage were the insurer of the previous vehicle, and this was evident from the NCD proof Mr J sent – which also outlined the end date of that policy. So, Advantage were aware that the NCD were no longer in use when the original policy expired and after they tried to re-debit the premium and cancelled the policy.

With the above in mind, I don't think the actions Advantage took here were fair or reasonable. Ultimately Advantage shouldn't have attempted to deduct the premium (under CIDRA). The premium they tried to take was also far greater than what it should have been as the NCD were available to use 33 days after the policy start. And the cancellation shouldn't have followed from that based on Advantage not being able to re-debit that amount (as that amount wasn't due or an appropriate remedy available to Advantage under CIDRA).

My views on what Advantage needs to do to put things right remain as outlined in my provisional decision, and for the same reasons already explained, so I won't repeat that in full here.

To summarise, the time on risk charged at cancellation was based on the incorrect pro-rata amount, as Advantage didn't take into account Mr J had nine years NCD to use for around eleven months of the policy. So, Advantage need to recalculate the pro-rata time on risk charge based on the higher premium amount when the NCD was in use elsewhere, and the lower premium amount when they were free to use, until the point the policy was cancelled. 8% simple interest also needs to be added to any refund due from date of cancellation to date of settlement.

Advantage also need to cover (refund Mr J) the £45 cancellation fee deducted from the pro-rata refund. 8% simple interest also needs to be added to this amount from date of cancellation to date of settlement.

In addition, as outlined in my provisional decision (and for the same reasons), Advantage also needs to remove any internal and external records of policy cancellation due to non-payment, provide Mr J with his nine years NCD proof and compensate Mr J £100.

My final decision

It's my final decision that I uphold this complaint in part and direct Advantage Insurance Company Limited to:

- Recalculate the pro-rata time on risk refund amount based on the higher and lower premium when the NCD was and wasn't in use on another vehicle
- Add 8% simple interest* from date of cancellation to date of settlement
- Cover the £45 cancellation fee that has been deducted from the refund, with 8% simple interest* added from date of cancellation to date of settlement
- Remove all records of cancellation for non-payment from internal and external databases
- Provide Mr J with his nine years NCD proof
- Pay Mr J £100 compensation

*If Advantage Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr J how much it's taken off. It should also give Mr J a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 1 February 2023.

Callum Milne
Ombudsman