

The complaint

Miss L complains that Advantage Insurance Company Limited (Advantage) unfairly cancelled her policy.

What happened

Miss L took out a motor insurance policy with Advantage. When a third-party tried to make claim on her policy in November 2022 Advantage became aware she was employed as a delivery driver, but it was recorded on her policy she was unemployed.

Advantage said she'd not informed it of her change of employment status during the term of her policy. It said it did not offer cover for delivery drivers. It issued a notice to cancel her policy and did not accept the claim. It said she still needed to pay the outstanding policy premiums.

Miss L said she did not require cover for being a delivery driver because she was covered by her employer's motor insurance policy whilst she was at work.

Miss L brought her complaint to our service and our investigator thought it should be upheld. They said Advantage should've treated what happened as a misrepresentation. They felt it was fair for Advantage to avoid the policy from the point of misrepresentation and refund her premiums. And it should stop chasing Miss L for the remaining policy premiums.

Advantage doesn't agree with the investigator and has asked for an ombudsman's decision. It said if it avoided Miss L's policy, it would be recorded on external databases and be declarable for the foreseeable future. Additionally it would need to make Miss L's new insurer aware of the policy avoidance.

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 Misrepresentation) 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 cancelled Miss L's policy because it said it did not offer cover for delivery drivers.

I saw the policy was initially taken out in July 2020 and at this point Miss L was unemployed. But she did not inform Advantage when she became employed and started a job as a delivery driver. I saw Miss L said she had been employed as a delivery driver for some time, approximately two years before the claim was made in November 2022.

I've looked at the opportunities Miss L had to update Advantage with her change of employment status and occupation.

Miss L's policy has renewed twice since it was first taken out and I saw the renewal paperwork that was sent to her to be checked for accuracy had her recorded as unemployed. In addition she changed her car in September 2022 and again new documents were sent for her to check and the documents said she was unemployed.

Miss L said she tried to change her employment status a number of times, but she has not provided any evidence of this.

Advantage provided records of contact from Miss L. These were in July 2021 when she rang about her renewal price, March 2022 when she made a claim which she said was a social journey and then a call in August 2022 when she changed cars. She did not mention her change of employment status or occupation at all during any of these calls.

I think Miss L failed to take reasonable care to inform Advantage of the changes in her circumstances. In this case her change in employment status and occupation details.

Because Miss L failed to update Advantage of her change of details, this means I'm satisfied Miss L's misrepresentation was a qualifying one.

I think Miss L's misrepresentation was careless. She said because her employer covered her on its business insurance whilst she was at work, she did not realise she still had to disclose her occupation as a delivery driver.

As I'm satisfied Miss L's misrepresentation should be treated as careless I've looked at the actions Advantage can take in accordance with CIDRA.

In this case Advantage said if Miss L had told it she was a delivery driver, it would not have been able to continue offering her insurance. It said this is irrespective of there being alternative business insurance in place when at work, as in Miss L's case, or not. It said this was because ultimately, it would still be exposed to meet any potential third-party claim if the business insurer declined to meet a claim.

Advantage provided evidence of its underwriting criteria, which I reviewed, and it confirms it would not have continued to offer a motor insurance policy to her if she had informed it that she was working as a delivery driver.

Under the terms of CIDRA as Miss L has made a careless misrepresentation and Advantage would not have offered cover it is entitled to avoid Miss L's policy. It can avoid the policy from the point of misrepresentation. In this case the date the misrepresentation was found, and return any unused premiums paid.

Advantage did not follow CIDRA. It said it has cancelled Miss L's policy and it requires her to pay for the remaining policy premiums. It said avoiding the policy is recorded on external databases whereas their cancellation of the policy is not. In addition it said, should it avoid the policy it means she would have been driving with no insurance.

We don't know if Miss L is going to be better or worse off with future premiums as different insurers ask different questions and/or use different risk ratings when calculating policy premiums.

Although I don't think Advantage should reinstate Miss L's policy I think the fair and reasonable outcome in this case is that Advantage should follow CIDRA.

Advantage should avoid the policy from the date it became aware of the misrepresentation and return any overpayment of premiums to Miss L. And it should stop chasing her for the premiums for the rest of the policy intended term.

If Miss L accepts my decision the policy avoidance will need to be declared as Advantage should add this to their external databases in line with CIDRA. If Miss L rejects my decision Advantage can require payment of the policy premiums, but Miss L may not need to declare the cancellation if Advantage hasn't recorded anything on their external databases.

My final decision

For the reasons set out above, I've decided to uphold Miss L's complaint.

I require Advantage Insurance Company Limited to follow CIDRA and avoid Miss L's policy. Advantage should avoid the policy from the date it became aware of the misrepresentation and return any overpayment of premiums to Miss L. And it should stop chasing her for the premiums for the rest of the policy intended term.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 11 June 2023.

Sally-Ann Harding
Ombudsman