

The complaint

Mr B is unhappy that Advantage Insurance Company Limited declined a claim he made on his car insurance policy and voided the policy.

What happened

Mr B's car was stolen so he claimed on his car insurance policy, which he'd taken out through a price comparison website. Advantage assessed the claim and declined it because they said Mr B hadn't disclosed modifications to the car when he took out the policy. They said that if he'd done so they wouldn't have offered him cover. So, they declined the claim and voided the policy, but refunded the premiums.

Mr B complained to Advantage, but they maintained their decision to decline the claim and void the policy. Unhappy, Mr B complained to the Financial Ombudsman Service.

Our investigator looked into what had happened. She thought Mr B had taken reasonable care when answering the questions when he took out the policy. She accepted he didn't know that the modifications weren't factory modifications. She recommended Advantage reinstated the policy, reassessed the claim, paid 8% simple interest and pay him £100 compensation. However, she thought they could deduct the premiums they'd refunded from the settlement.

Mr B accepted the investigator's recommendation. Advantage didn't reply. So, I need to make a decision.

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 says Mr B failed to take reasonable care not to make a misrepresentation when he answered a question about modifications to the car. They said that if Mr B had disclosed that the car had modifications, which weren't factory modifications, they wouldn't have offered cover. They've provided underwriting information which demonstrates that.

I've looked at the question Mr B was asked which was:

'Does the car have any modifications?'

There's a 'help' box next to the question which explains that modifications are: 'non-standard changes made to the car after manufacture. These include new spoilers, alloy wheels etc. but a tow bar doesn't seem to be listed'. Mr B answered 'No' to that question. However, I think Mr B took reasonable care when answering the question. I'm not persuaded Mr B was aware that the car had modifications which were non-standard changes made to the car after manufacture. I'll explain why.

Information about the modifications wasn't set out on the documents Mr B received when he bought the car. So, I don't think he would have reasonably been aware of them. In reaching that conclusion I've taken into account the specification of the car Mr B was purchasing and I think he reasonably concluded these were changes made when the car was manufactured, based on the information he had.

Advantage has referred to an online advert the dealership provided which does include a list of the modifications. But Mr B said he didn't see that advert because he originally made an appointment to see a different car. However, when he was at the dealership he saw the car he ultimately purchased. So, he says he didn't see the advert Advantage has looked at. The evidence I've seen suggests it is most likely that the advert was removed once Mr B paid the deposit in 2019. Mr B didn't take out this policy until 2021. And I've found Mr B's testimony to be credible, plausible and persuasive. That means I'm not persuaded Mr B saw the advert in 2019 or that he had access to it when the policy was taken out.

As I think Mr B took reasonable care when he answered the question, I don't think he made a qualifying misrepresentation to Advantage. So, I don't think Advantage acted reasonably when they declined the claim and avoided the policy.

Our investigator awarded £100 compensation for the distress and inconvenience caused to Mr B by delays in handling the claim and poor communication. Advantage didn't provide a response to the investigator's recommendation and they've not provided any further information in support of the actions taken. In any event, I'm satisfied the decision to decline the claim unfairly also had an impact on Mr B. I think the overall situation caused him a lot of worry and stress, particularly as he was under a lot of financial pressure because his car had been stolen and he was making ongoing finance payments.

Putting things right

Advantage needs to put things right by reinstating the policy, reassessing Mr B's claim in line with the remaining policy terms and adding 8% simple interest per annum from the date the claim was declined until the date of settlement. They also need to pay him £100 compensation for the distress and inconvenience caused by poor customer service. Advantage can reduce the overall settlement to reflect the premiums it refunded to Mr B.

If Advantage considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr B how much it's taken off. They should also give him a tax deduction certificate if he asks for one so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I'm upholding Mr B's complaint about Advantage Insurance Company Limited and direct them to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 September 2023.

Anna Wilshaw
Ombudsman