

## **The complaint**

Mr S complains that Advantage Insurance Company Limited (Advantage) unfairly avoided his motor insurance policy and refused to pay his claim.

## **What happened**

Mr S took out a motor insurance policy with Advantage through an online price comparison website.

When his car was stolen he tried to make a claim on his motor insurance policy.

Advantage said he'd answered the question it asked about the legal owner and keeper of the vehicle incorrectly. And it considered this to be a careless qualifying misrepresentation, which entitled it to avoid his policy, decline his claim because of this and return the premium he'd already paid.

Mr S brought his complaint to us and our investigator thought it should not be upheld. They agreed there had been a qualifying misrepresentation and agreed it was careless and that Advantage was entitled to avoid his policy. And it was correct to return the premium he'd paid to him.

Mr S doesn't agree with the investigator and has asked for an ombudsman's decision. He said he made a mistake with the details at inception but said Advantage did not send him the policy documents. He also said that Advantage had told him the mistake would not affect the claim and it would settle it.

## **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 thinks Mr S failed to take reasonable care not to make a misrepresentation when he made his online application for a motor insurance policy and he stated he was the registered owner and keeper of the car to be insured.

I've looked at the questions asked on the price comparison website and it asks "*Whose name is on the registration document?*" and also "*Who owns the car?*". Mr S responded the policy holder to both questions.

In this case I looked at the vehicle registration documentation and found it was not Mr S's name on the document. Mr S said that it was his friend's name on the registration document and the car was bought on a finance agreement by this person.

I do not think Mr S took reasonable care to answer these questions accurately.

Advantage provided evidence by way of its underwriting criteria that it would not offer a policy if the vehicle was owned by anyone other than the policy holder.

This means I'm satisfied Mr S's misrepresentation was a qualifying one.

Advantage said Mr S's misrepresentation was careless.

I agree that Mr S's misrepresentation was careless. Mr S has accepted he made a mistake. However he said he was not sent the policy documentation. I saw evidence that on 10 March 2022 a welcome letter which included the policy documents was produced and sent to Mr S. Additionally the documents were available on his online account. I cannot hold Advantage responsible for Mr S not receiving these, or accessing his online account to look at his policy documents. It was his responsibility to check that everything was correct when he took out the policy.

Mr S also said when Advantage found he was not the registered owner or keeper after he made the claim on his policy that it had told him this would not affect the claim and it would settle.

I listened to the calls made by Mr S when he first made his claim after his car was stolen. Although I heard Advantage's agents say they would change the details of the car registered owner and keeper, when they attempted to do this it was not a change that was accepted. Mr S was told this change had been referred to the underwriter.

As I'm satisfied Mr S's misrepresentation should be treated as careless, I've looked at the actions Advantage can take in accordance with CIDRA. Advantage are able to

- avoid the policy from the point of misrepresentation, which in this case is the start of the policy in March 2022
- not deal with the claim
- return any unused premiums.

In this case Advantage avoided Mr S's policy from the start, did not deal with his claim and refunded his premiums at the start of February 2023.

Therefore, I'm satisfied Advantage was entitled to avoid Mr S's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed Advantage does not have to deal with his claim following the theft of his car. As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Advantage to rely on it to avoid Mr S's policy produces the fair and reasonable outcome in this complaint.

**My final decision**

For the reasons set out above, I've decided not uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 December 2023.

Sally-Ann Harding  
**Ombudsman**