DRN-4586224

The complaint

Mrs and Mr C have complained that Advantage Insurance Company Limited ('Advantage') unfairly increased their premiums under their home insurance policy. For the avoidance of doubt. I refer to Mrs C in the body of the decision below as she was the primary contact in relation to the complaint.

What happened

Mrs C purchased home insurance with Advantage in June 2023. She had a new kitchen worktop installed, but it cracked in December 2022. Mrs C had decided to pursue a small claim as she believed the worktop cracked due to poor workmanship. Mrs C sought advice from the small claims court and was advised to obtain an expert witness report on the matter. Mrs C therefore went to Advantage however it directed her to the previous insurer, which said that it didn't provide the service which Mrs C was asking for. Mrs C thought that this was the end of the matter as far as the insurers were concerned. However, the third-party company added this information to the property claims history.

The matter became apparent when Mrs C had contacted Advantage in July 2023 to add various elements of cover to her policy. Advantage said that the previous insurer had recorded Mrs C's enquiry as a 'claim notification only'. As the incident had happened in the previous policy year, Advantage said it needed to be included on the current policy. It then charged Mrs C £90 plus interest due to the notification, as it said that changing the claims history resulted in a premium increase. Mrs C considered that this was unfair and complained to Advantage.

Advantage didn't uphold Mrs C's complaint and said that the correct process had been followed. It explained that if Mrs C had contacted it about an incident which occurred after her policy with Advantage started, her policy premiums wouldn't have changed, and the change would have been considered from her next renewal date. It said that its terms were clear that a change in circumstances may result in a change in premium. Mrs C remained unhappy with the complaint outcome and referred the complaint to this service.

The relevant investigator upheld Mrs C's complaint. He treated the case as one under the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). He wasn't persuaded that a reasonable person would have known that they were required to disclose the incident which Mrs C contacted Advantage about. He said that as far as she was concerned, she'd approached her home insurer based only on advice she'd received from the court. He recommended that Advantage reimbursed Mrs C for the relevant amount together with interest, as well as £100 for the trouble and upset caused.

Advantage didn't agree with the investigator's view and the matter was therefore referred to me to make a final decision in my role as Ombudsman.

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 key issue for me to consider is whether Advantage increased Mrs C's policy premium in a fair and reasonable manner. I don't consider that it did so, and I'll explain why.

In determining this matter I've also considered the submissions of the parties as summarised below. Mrs C explained that she'd contacted a few people following the incident where the worktop in their kitchen had been damaged. The said that the kitchen 'island' hadn't been fitted correctly and this led to it being cracked. Mrs C said she went to the small claims court and that the relevant judge had suggested that she should try to obtain an expert report through her insurer. However, she said she had no intention of claiming through her insurance as it wasn't accidental damage.

Mrs C then contacted Advantage and her past insurers and was advised that they didn't provide this service. She realised that she was unable to make an insurance claim as she didn't have accidental damage cover at the relevant time. Mrs C was unhappy that her premiums went up by over £90 because of the enquiry. Finally, Mrs C confirmed that she ultimately had to pay for a report from an independent witness, costing £500, who confirmed that the damage was due to poor installation.

I now turn to Advantage's submissions. It said that Mrs C had phoned at the end of June 2023 to ask if it could instruct someone to assess the worktop but that she didn't want to claim. It said that when she contacted the previous insurer, Mrs C had asked that an assessor be sent to her property to inspect the worktop. Advantage said the previous insurer couldn't assist *'as the circumstances of the incident weren't covered under the policy'* and Mrs C hadn't purchased accidental damage cover. It said that an insurer wouldn't pay for loss or damage arising from faulty workmanship in any event. As there wasn't cover, they confirmed they couldn't accept the clam. Advantage said that *'The claim was closed the same day as notification only.'*

Advantage said that Mrs C had contacted its offices in early July 2023 to add home emergency and other cover and this increased the premiums by just over £70 including interest. It said that on this same call, Advantage had asked if all other details on the policy were the same as before, and Mrs C confirmed they were. A few days' later, Advantage received confirmation from the third-party company that an incident had been logged. It said that the details of the incident were added as 'notification only', with the 'no claims discount' unaffected. It said that the additional premium for this change in claims history was for just over £90 including interest, with no additional fee charged.

Advantage said that under the terms of the policy, the premium would be based on the information provided to it. Advantage said it was clear that if a change to the policy was acceptable to it, then this could result in revised terms and/or a change in the premium and it referred to the relevant part of the policy booklet. This stated that Advantage needed to be informed if the information provided and recorded in the statement of insurance had changed. This document had confirmed that there had been no disclosed incidents and it said that this was no longer correct, as Mrs C had logged an incident which happened under the previous contract.

Finally, it stated that it was clear Mrs C was notifying it of an incident that happened with her kitchen worktop with the intention of making a claim for an assessor to attend her home. It didn't feel it was fair to have to compensate Mrs C and refund the premium plus interest as Mrs C had been treated the same as any other customer in her position. In conclusion, Advantage said that whilst it appreciated that Mrs C contacted it as advised by a small claims court, any claim disclosed to the underwriter would nevertheless be logged and

therefore listed on the policy, even if it was a notification only. It said that it had correctly rated the matter following information provided from an insurer that a fundamental change in risk had occurred, so leading to an increase in premium.

In reaching this final decision, I've considered the impact of CIDRA as well as the terms and conditions of the relevant policy. CIDRA states that it's the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer. If a consumer fails to take care in giving or confirming information, the insurer may then have certain remedies. For it to be a qualifying misrepresentation, the insurer must show it would have offered the policy on different terms or indeed not at all if the consumer hadn't made the misrepresentation. The remedy available to the insurer under CIDRA depends on whether any qualifying misrepresentation was deliberate, reckless, or careless.

Advantage considered that the policy booklet made it clear that it needed to know about changes including where *'Any of the information provided and recorded in your statement of insurance has changed'.* It considered that Mrs C hadn't disclosed in the incident history that she had *'any home claims or suffered losses in the last five years.'* I'm satisfied on the evidence that Mrs C made no deliberate, reckless, or careless misrepresentation when she'd taken out her home insurance with Advantage in June 2023. At most, she'd made an innocent mistake in not considering 'suffered losses' included matters for which she had no intention to make an insurance claim. In the circumstances, I don't consider it fair or reasonable for Advantage to rely on any of the remedies contained in CIDRA.

Turning to the central issue in this case, it's clear that Advantage accepted that Mrs C had approached it in the first instance for assistance to obtain a report from an expert witness to support her court application. It's also clear that it was aware that Mrs C had no intention of making an insurance claim and was pursuing contractors in the small claims' court in relation to alleged poor workmanship. She approached the insurers only due to an indication from the court that this may be a way of obtaining an expert report. I don't consider that Mrs C would reasonably have been aware that her approach to the insurers for support with a court case would be something that would retrospectively form part of a claims' history.

Whether the previous insurer fairly and reasonably added this event to the claims' history is not the subject of this particular complaint. The question here is whether Advantage acted fairly and reasonably in automatically accepting the claims history to charge an additional sum of £90 plus VAT. I don't consider that it did exercise its discretion to charge fairly and reasonably. This is particularly in the light of the fact that Advantage had been appraised of the circumstances. There's no indication that, during Mrs C's initial approach, it considered that the approach related to any disclosable event or that it would have treated it as such in future. I don't consider that Advantage acted fairly and reasonably in choosing to charge an additional premium due to the previous insurer treating this as a notification of loss. Nor did it advise her that this might be the outcome of it's signposting to the previous insurer.

Mrs C had asked Advantage and the previous insurer for an assessor to be sent out. This doesn't however equate to a potential claim event. Advantage's final response letter makes it very clear that Mrs C had no intention of making such a claim. I don't consider she would have had any reason to understand that the consequences of this request would have led to a significant additional premiume. As both insurers told Mrs C that they were unable to assist with a task unrelated to any claim, it had been reasonable to assume that it was the end of the matter and that she would obtain her own independent report.

In the circumstances, I agree that a fair and reasonable outcome to this matter would be for Advantage to reimburse Mrs C £90 plus VAT, together with interest. I also consider that compensation of £100 should be paid by Advantage for the distress and inconvenience caused to Mrs C as a result of the way it handled this matter

My final decision

For the reasons given above, I now require Advantage Insurance Company Limited to do the following in relation to Mrs and Mr C's complaint:

- reimburse the £90 plus VAT paid by Mrs and Mr C
- pay interest on this sum at the annual rate of 8% simple interest*, from the date it was paid by Mrs and Mr C to the date of settlement.
- pay £100 to Mrs and Mr C in compensation for the distress and inconvenience caused.
-

*If Advantage considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs and Mr C how much it's taken off. It should also give Mrs and Mr C a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 4 March 2024.

Claire Jones
Ombudsman