

The complaint

Miss S has complained about her motor insurer Advantage Insurance Company Limited because when she had a claim it settled it proportionately.

What happened

Miss S's policy with Advantage renewed in June 2022. In May 2023 her car was stolen. Advantage accepted the claim but noted that a named driver on Miss S's policy had a speeding conviction on his record which had not been declared at renewal. Advantage said that if it had been told about the conviction the premium would have increased. Looking at what Miss S had paid and what it would have charged, it said Miss S had paid for 84%, meaning there was a shortfall of 16%. It applied that percentage to the settlement for the car.

The settlement was based on a market value of £16,060, with 16% of that being £2,569.60. There was also the £850 policy excess to deduct. Leaving Advantage paying £12,640.40 in total for Miss S's car. With that payment being made to the finance company, Miss S received no money.

Miss S was unhappy about the proportional settlement. She explained to Advantage that her violent ex-partner – the named driver – had recently left her with the police being involved and she was now in financial difficulty too. She said she hadn't known about the named driver's conviction for speeding. She asked Advantage to assist her in the circumstances by either letting her pay the increased premium or by even just reducing the percentage it was applying. Advantage wasn't ultimately persuaded to change its position and Miss S complained to the Financial Ombudsman Service.

During our investigation Miss S shared details from the police. A decision had been made to prosecute the named driver for various offences relating to his behaviour towards Miss S.

Our Investigator felt Advantage had reached an unfair and unreasonable decision. She felt the circumstances Miss S had been living in had likely affected her ability to ask the named driver questions about the renewal. She felt Advantage should pay Miss S the amount it had deducted from the settlement, plus interest and £300 compensation.

Advantage wasn't happy with the outcome, or the reasoning applied to reach it. The complaint was referred to me for an Ombudsman's consideration.

I wasn't minded to uphold the complaint. So I issued a provisional decision. In which I noted, with regret, that my view would likely cause further upset and worry for Miss S as my findings would have a significant impact on her. I explained I was sharing my reasoning in the hope she could understand why I was of that view. My provisional findings were:

"Proportional settlement"

Advantage has shown that, at renewal, it did expect to be told about any changes from the year before and if any driver had any convictions. With the named driver having received a speeding conviction since the last renewal which Miss S did not tell Advantage about.

There is legislation which sets out the rights and obligations of both parties when arranging policies of insurance and at renewal. The legislation is designed to level the playing field between both parties and to set out what each can expect from the other. For example, a policyholder can expect an insurer to ask clear questions about important things it wants to be told about and an insurer can take any answers given (or the fact of detail not given) at face value as being likely correct. The legislation also sets out what insurers can do if incorrect information is given.

If a policyholder makes a mistake when answering an insurer's questions, that is known as a misrepresentation. The legislation – the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) – requires a prospective policyholder to take reasonable care to not make any misrepresentation to the insurer when applying for cover. If a misrepresentation is made which is a qualifying misrepresentation, then the insurer will be allowed to take certain action. Of relevance here is that one of those permitted actions is to settle any claim proportionately.

Whether or not a misrepresentation is seen to be a qualifying one depends on two things. First, did the prospective policyholder take reasonable care during the renewal to answer any questions correctly to the best of their knowledge. Second, can the insurer show that if correct/full detail had been given, it wouldn't have entered into the insurance contract, or it would but only on different terms.

What the insurer would have done is often a matter of fact – and I have seen evidence in that respect. I'm satisfied that if Miss S had told Advantage about the named driver's conviction, it would have charged an increased premium. The issue then is whether Miss S took reasonable care. If she did, then there was no qualifying misrepresentation. If she failed to take reasonable care, then her misrepresentation was a qualifying one. With CIDRA setting out, as I said, what an insurer can do when a qualifying misrepresentation occurs.

I'd like to assure Miss S that I'm aware of the details she's shared regarding what she's been through. And also of the criminal charges laid against the named driver. I'm aware that one of those charges relates to his ongoing unreasonable behaviour over a two-year period between 2021 and 2023. I'm conscious that the renewal in question took place in the middle of that in 2022. The difficulties Miss S has been through can't and shouldn't be ignored. However, when considering whether or not Miss S took reasonable care when she failed to tell Advantage about the conviction, I have to decide if those awful circumstances influenced what she said and did. Having listened carefully to what Miss S told Advantage when complaining about the percentage deduction, I'm not persuaded it did.

Miss S, like any policyholder, had a duty to carefully consider her renewal documents to make sure that detail passed to Advantage was correct. To not check a renewal would not be taking reasonable care. I understand that Miss S allowed the automatic renewal to go through without giving it much thought because she wasn't aware of anything which had changed. But I bear in mind that she's said the renewal occurred at a time when the named driver had been living away for a period. From what Miss S has said she assumed nothing had changed. Making an assumption like that – particularly where there's been a separation, doesn't rise, in my view, to the level of reasonable care.

I absolutely appreciate that Miss S might have been in a position where she didn't feel able to ask the named driver if there was anything she needed to know about whilst he'd been living away. And that he might not have told her had she even asked. But in the

circumstances here, that was not why she did not ask him and why inaccurate information was passed to Advantage. Rather, as I've said, Miss S didn't give much thought to the renewal, which was automated, at best she assumed nothing had changed for her to need tell Advantage about. I think that even had she reviewed the renewal documents, that assumption would have remained. Unfortunately for Miss S, as I've said above, making assumptions does not amount to taking reasonable care.

I do then think there was a qualifying misrepresentation by Miss S – Advantage asked her questions at renewal, which she did not take reasonable care to answer correctly to the best of her knowledge and it has shown it would have done something differently had correct detail been given. CIDRA says that an insurer can look at what it would have done if the misrepresentation had not been made. Where that involves charging an increased premium and there's a claim involved, CIDRA sets out the method for dealing with that. That's to say that the percentage difference between the premium charged and that which would have been charged, can be applied to the claim settlement. Advantage has shown the difference was 16% and it applied that to the settlement. So Advantage acted in line with the relevant legislation.

I realise that has meant that for the sake of £70 or so in extra premium, Miss S has now been left with no settlement to use to buy a new car – with the settlement paid by Advantage, along with a payment from Miss S's GAP insurer, just clearing the finance on her stolen car. I understand that she feels that is unfair. But the remedy set out in CIDRA is as explained above. There isn't an option for just the increased premium sum to be collected instead, or for a mediated percentage sum to be agreed. I know Miss S feels that this is not fair, because it's not her fault, because it was not her conviction, and that she is suffering unfairly when the named driver is not. However, she is the policyholder and taking reasonable care was ultimately her responsibility.

I know Miss S will keenly feel this loss of £2,569.60 – that it had made such a difference to her previously to know Advantage had been told it should pay that sum to her, plus interest. But for me to require Advantage to pay that, I'd have to be satisfied it had done something wrong. As I've explained above, that is not the case here.

Compensation

I do intend to maintain a compensation award of £300. I think Advantage failed Miss S when it first asked about the conviction – it wasn't clear that it had found a conviction for the named driver. This caused Miss S to provide an answer regarding her own licence record and caused her some confusion when it initially proposed the proportional settlement.

Further an Advantage call handler – seemingly whilst knowing that Miss S was in a difficult situation, called Miss S at nearly 8pm on a Friday evening to deliver what the advisor knew was going to be bad news for her. Then calling her back with an update around 9pm on the evening again on the Monday to confirm the bad news – that the matter could not be resolved as Miss S had asked. With the advisor also suggesting Miss S should call her GAP insurance to see how its settlement would be affected. Which Miss S could not do until the following day. The news would have caused Miss S to be upset whenever it was delivered but I think that was more keenly felt and more difficult for her to deal with at those times.

I'm satisfied that £300 compensation is fairly and reasonably due."

Advantage didn't reply.

Miss S said she disagreed with my findings. She said:

- She'd like the remedy recommended by our Investigator.
- She thinks I've not been very empathetic to her situation.
- She exercised reasonable care during the renewal process as her situation left her unable to fully comprehend and disclose relevant details.
- She feels the proportional settlement places a disproportionate burden on her, impacting further on her already challenging personal and financial situation.
- She feels Advantage's service failings should also trigger reconsideration of its settlement.
- The £300 is welcome but doesn't account for what she'd been through because of someone else's driving history. It should be increased to at least a sum that could be used for a deposit on a vehicle.

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.

I understand that our Investigator's remedy is preferable for Miss S. But when a complaint progresses to an Ombudsman, it is my job to review it afresh and reach my own conclusion about the fair and reasonable outcome.

I'm sorry Miss S feels that my findings show I've not empathised with her situation. I appreciate it may seem that way because my decision hasn't gone in her favour regarding the settlement. But I can assure Miss S that I've certainly taken into account everything she's been through.

I carefully considered the reasonable care question before reaching my provisional findings. Whilst I note Miss S's further explanation in reply, I'm not persuaded that her conversations with Advantage at the time the proportionate settlement was being discussed show its most likely that she didn't check the renewal because she didn't, or couldn't, comprehend its importance.

The proportional settlement has been made in line with legislation. And that legislation was put in place, as I said, to level the playing field between insurers and consumers. With this applying across many types of insurance, and potentially affecting the settlements on numerous claims of varying sizes. Advantage has offered settlement in line with what the legislation allows. I can't reasonably find it at fault for acting in line with the legislation.

I did find Advantage failed Miss S regarding the service it provided. But those failings didn't impact what Miss S did at renewal, nor the settlement it made because of the detail given at renewal. The service failings came when it was investigating what had happened at renewal and then in communicating its decision on that to Miss S. So the fair and reasonable remedy for those failings is compensation for the upset they caused – not to require the claim settlement to be reconsidered.

I appreciate that Miss S feels the named driver's points have caused all of this, with her suffering extensively as a result, which the compensation doesn't make up for. And that it's not enough to even put a deposit on a car. But as I've noted above the compensation is to make up for the upset caused by what I've found to be Advantage's failures. I remain satisfied that £300 in that respect is fair and reasonable.

Having reconsidered everything, including Miss S's reply, I've not been persuaded to change my view set out provisionally. As such, my provisional findings, along with my comments here, are now the findings of this my final decision.

Now that I'm issuing my final decision, our complaint process is at an end. I'm mindful that as it has ended in a way that Miss S is not happy with, my final decision will cause her more upset in what I know, for her, is a very difficult period. I'm sorry for that.

My final decision

I require Advantage Insurance Company Limited to pay Miss S £300 compensation. But, for the reasons explained, I don't require Advantage Insurance Company Limited to do or pay anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 25 April 2024.

Fiona Robinson
Ombudsman