

The complaint

Mr R complains that Advantage Insurance Company Limited (“Advantage”) asked him to repay a portion of a claim it’d paid under his car insurance policy.

Mr R is represented in his complaint by a family member. For ease I’ll refer to comments made by the comments provided by the representative as coming from Mr R.

What happened

The background to this complaint is well known to both parties, so I’ll provide only a brief summary here.

Mr R had a car insurance policy with Advantage. His annual premium was £805.34.

He made a claim in late 2022. The settlement amount was £12,104 and this was paid.

Advantage found that Mr R hadn’t told it about a claim he’d made in 2019. It initially told him about this in early March 2023.

Mr R admits this was an oversight. He’d remembered a claim he had in 2017 which had been disclosed to Advantage but the 2019 one he’d simply forgotten about. It related to his wife’s policy, and she’d sadly passed away.

Advantage thought this misrepresentation on Mr R’s part was unintentional. It calculated what the premium would have been had the 2019 claim been disclosed and wrote to Mr R in June 2023 telling him he had to repay 26% of the claim, which is £3,147.04. His premium should have been £1,101.96, which is a difference of £296.62.

It said it did this because legislation called the Consumer Insurance (Disclosure and Representations) Act 2012 (“CIDRA”) allows an insurer to settle a claim “proportionately”.

Mr R brought his complaint to this service. Advantage later made an offer to pay Mr R £200 compensation for its error in paying his claim without dealing with his misrepresentation.

Mr R said he couldn’t afford to pay this amount in a lump sum as he’s a pensioner. He offered to pay the extra premium he should have paid.

Our investigator looked into the complaint and thought it would be upheld. But she thought Mr R should pay the increased premium to Advantage.

Advantage disagreed. It said the legislation allowed it to settle claims in proportion and it said it would carry out affordability checks on Mr R and seek to recover £3,147.04 from him. It said it thought Mr R had profited from underpaying his premium since the claim in 2019.

Because it didn’t agree, this complaint has been referred to me for 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.

There's no dispute here about the facts of this case. Advantage accepted the 2023 claim and settled it to Mr R's satisfaction. Mr R acknowledges that he didn't declare the earlier claim when he bought the policy (which had renewed twice since the original non-disclosure).

There is legislation which covers this kind of situation and specifies what actions insurers are entitled to take if a customer makes a misrepresentation when they buy a policy.

Both parties accept that the misrepresentation was a genuine error. In CIDRA terms, this means the misrepresentation was careless rather than reckless or deliberate.

According to CIDRA, Advantage has a number of possible remedies based on what they would have done if it'd known all the facts at the time the consumer applied for the policy. If it would have offered cover, but would have charged a higher premium, Advantage is entitled to settle any claims proportionately. This is known as a qualifying misrepresentation under CIDRA.

CIDRA specifically says how any proportionate settlement is to be calculated. In essence, if the customer paid X% of the premium they should have paid (had all the facts been known) then the insurer need only pay X% of the value of the claim.

But in this case, Advantage had already settled the claim by making payment to Mr R.

When it wrote to him on 13 May it warned him it may recover part of the claim from him.

It then told him in June to return the money, giving him about a month's notice.

In its response to the view, Advantage said:

"We made an error in not acknowledging the misrepresentation until after payment, but we have the right of recovery as detailed in the policy terms which is applicable here."

I asked Advantage what it meant by this and it responded to say it had made an error when it made this statement.

It seems to me that Advantage made a substantial error in how it handled Mr R's claim. It knew as early as March about a potential issue with Mr R's previous claims history, but failed to act on that for a significant amount of time. And from the information I have, by that time the claim had already been settled.

It seems to me that Advantage had access to the information it needed to assess and pay Mr R's claim according to CIDRA and had the time and resources to do this.

I've said above that CIDRA allows an insurer to settle claims proportionately, but it doesn't deal with claims that have already been settled. Instead, it specifically deals with claims in the course of being made, and future claims.

So I don't think it's fair in this case that Advantage, having made the error and settled, then uses CIDRA to defend its position in recovering the £3,147.04 from Mr R.

In his approach to this service, Mr R talks about Advantage's "*emotionally barren*" approach to his complaint and having read the file I understand why he's said this. He's explained his health difficulties and it seems to me that Advantage has taken little notice of his vulnerabilities.

From the file I can see that Mr R has benefitted from having a lower premium for a few years due to his misrepresentation. Taking into account the distress and inconvenience he's suffered due to Advantage's error, and that Mr R has now given up driving, I think the fair thing to do is to say that the financial savings he's made are offset by the distress and inconvenience he's suffered.

What I'm left to consider is what's fair and reasonable in this case. Mr R has offered to pay the premium he owed, which is in my view the fair result because it gives Advantage the extra premium it should have, but Mr R doesn't escape from his responsibility to pay that additional amount.

I'd also like to offer my best wishes to Mr R and his family.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint. The parties now need to liaise and Mr R needs to repay the additional premium of £296.62 to Advantage Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 July 2024.

Richard Sowden
Ombudsman