

## **The complaint**

Mr T complains about how Advantage Insurance Company Limited (“Advantage”) cancelled his policy following a misrepresentation under his car insurance policy.

## **What happened**

Mr T had a motor insurance policy with Advantage covering his car.

When he bought the policy from Advantage he told it he had eight years’ No Claims Discount (“NCD”). He supplied it with a copy of a new policy schedule from another insurer showing seven years’ NCD from a previous year.

Advantage asked Mr T for proof of his NCD as it found that Mr T hadn’t told it about a claim. Advantage didn’t get the correct proof from Mr T and it changed his NCD to zero. It told him it would charge him an additional premium of £610.93, over his original premium of £1,007.88.

Mr T didn’t agree and complained. Advantage didn’t respond to his complaint until after it’d cancelled Mr T’s policy. It recorded the cancellation on an external database.

Mr T remained unhappy and brought his complaint to this service.

Our investigator looked into it and thought it would be upheld. She thought Advantage should have let Mr T cancel his policy, so she thought it should remove the record of it cancelling the policy from the external database. She also said she didn’t think Advantage had calculated the premium refund correctly and it should refund Mr T, plus interest, and not charge him an administration fee. She also thought it should pay him £200 compensation.

Advantage didn’t agree with the view. It asked that the complaint was reviewed by an ombudsman, so it has been passed to me to make a final 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.

Having done so, I’m upholding it and I’ll explain why.

I’ve only provided brief details of what happened between Mr T and Advantage above, but I’d like to assure both parties that I’ve read the complete file but I won’t refer to it all here. This is in line with the informal nature of this service.

At the centre of this complaint is that Mr T supplied Advantage with a copy of his NCD that wasn’t acceptable to Advantage. This is because the NCD was shown on a new policy Mr T had taken out, rather than at the end of a year’s cover.

Because this proof of NCD wasn’t accepted, Mr T’s policy was ultimately cancelled by Advantage.

But it's clear to me that Mr T didn't understand why his NCD wasn't being accepted by Advantage and it doesn't seem to have provided him with the clarity about why it was wrong, and what would be needed to accept it.

I can see Mr T contacted Advantage to tell it he'd complained about the matter in hand even when it tried to cancel his policy. It continued to cancel it without responding to his questions.

When looking at a complaint where there is a failure to disclose relevant information like Mr T's NCD, I must first consider whether there has been a qualifying misrepresentation under the relevant law which is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out 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.

Mr T accepts he made a mistake when he provided his NCD details. I can see from the evidence that he tried to find out what he'd done wrong, but Advantage didn't tell him. I can't see evidence to show that Mr T's misrepresentation was anything other than careless.

I've gone on to consider whether Mr T's misrepresentation was a qualifying one. In other words, what would Advantage have done differently had it received the correct information from Mr T when he applied for the cover. Advantage said it would charge Mr T an additional premium for cover, so it follows that his was a qualifying misrepresentation.

CIDRA says that an insurer cannot insist on charging a higher premium. Mr T didn't accept the premium increase. And we'd expect Advantage to have offered him the chance to cancel the policy before it cancelled it, although CIDRA does allow the insurer to cancel the policy in this situation.

But I also need to consider that Mr T had paid the original premium up front at the beginning of the policy meaning that it's reasonable to think he'd paid for about 60% of a year's cover at the increased premium. The cancellation actually happened about 78 days into the policy.

Having a policy cancelled by an insurer can have a significant effect on a policyholder and Mr T will currently need to tell insurers about this.

I don't think Advantage has given Mr T a fair outcome by cancelling his policy during the period he'd already paid for whilst he was complaining about that very matter.

In its further responses to this service Advantage has talked about its ability to protect itself from potential fraud justifying why it took the approach it did. This service considers cases on an individual basis and although I understand Advantage's position, I can't agree that by doing what it did it treated Mr T fairly.

It follows that I think Advantage need to make things right for Mr T by removing the record that it cancelled his policy from its internal database and any external databases it's

updated. If it's not able to remove the record, it must update them to show Mr T cancelled the policy.

Advantage also needs to refund Mr T the unused portion of his premium. I've thought about the various fees charged by Advantage during Mr T's policy. CIDRA says the insurer should return any unused premiums to the consumer (sometimes referred to as a 'pro rata' refund). The Act doesn't say the insurer can charge a cancellation fee or anything other than a pro rata charge – so we don't think it should do so. But I think it's fair that Advantage charged Mr T the £20 arrangement fee.

My decision on these fees varies slightly from the view. I'd normally issue this as a provisional decision taking this into account, but as the cancellation fee was only £45 and the outcome is in Mr T's favour I'm going to issue this as a final decision as I regard this as a minor change.

Because Advantage has already refunded part of Mr T's premium, it now needs to refund him the remainder. It should also add interest at 8% simple on this remainder amount from the date the original refund was made to the date this payment is made.

Mr T has also told this service about his inconvenience caused by the cancellation of his policy despite his repeated questions back to Advantage and ongoing complaint. I can see from his evidence that he's been caused distress and inconvenience by Advantage. I've thought carefully about this and considered this service's guidelines on compensation and I think the sum of £200 is appropriate.

### **My final decision**

For the reasons set out above, my final decision is that I uphold this complaint. Advantage Insurance Company Limited should:

- Pay Mr T £200 compensation for his distress and inconvenience.
- Remove records of it cancelling Mr T's policy from its internal and any external databases it's updated, or amend them to show Mr T cancelled his policy.
- Refund to Mr T the unused portion of his policy on a pro-rata basis after deduction of the arrangement fee of £20 only. Part of this refund has already been paid, and this can be deducted. Advantage also needs to pay interest at 8% simple on the difference between the original refund and this increased amount, from the date it originally refunded him, to the date this payment is made.

If Advantage Insurance Company Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Advantage Insurance Company Limited must pay the amount within 28 days of the date on which we tell it Mr T accepts my final decision. If it pays later than this, it must also pay interest on the amount from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 11 July 2024.

Richard Sowden  
**Ombudsman**