

The complaint

Mr J has complained that Advantage Insurance Company Limited settled a claim made on his motor insurance policy proportionately. He said if he had known about the percentage increase in premium it applied for an undisclosed motoring offence he wouldn't have taken out cover. He was also unhappy with its level of service.

What happened

Mr J took out a motor insurance policy with Advantage through an online price comparison site. When his car was stolen from outside his family's house, he tried to claim on his policy.

Advantage accepted his claim but settled it proportionately. When Mr J complained, it said he'd answered the question he'd been asked about previous driving convictions incorrectly. And that it considered this to be a careless qualifying misrepresentation, which entitled it to settle his claim proportionately. But Advantage agreed that it had caused avoidable delays in the claim and it paid Mr J £75 compensation for this.

Mr J brought his complaint to us, and our Investigator didn't recommend that it should be upheld. He agreed there had been a qualifying misrepresentation and he believed it was careless. So he thought Advantage had fairly settled the claim proportionately. And he thought its offer of compensation for the avoidable delay was fair and reasonable.

Mr J doesn't agree with the Investigator and has asked for an Ombudsman's decision. He said that if he'd known that Advantage would have increased his premium by 16% if he had disclosed the three points on his licence then he'd have taken out cover elsewhere.

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 can understand that Mr J felt frustrated by Advantage's decision to reduce his settlement by 16%. He said this had cost him about £4,000 as he felt Advantage's reduction was too high. But I can see that the actual deduction was about £7,500.

I'm satisfied the relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it is entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

Advantage thinks Mr J failed to take reasonable care not to make a misrepresentation when he stated in his application via a comparison site that he didn't have any driving convictions within the previous five years.

And I've looked at the question he was asked when he completed the application and I agree he failed to take reasonable care. This is because he was asked:

"Have you had any driving related convictions, endorsements, penalties, disqualifications or bans in the past 5 years?"

Mr J was asked to answer "Yes" or "No". And he was provided with further information in a pop-up box. I think this was a clear question asked by Advantage through the comparison site Mr J used. Mr J also had the opportunity to check his policy documents after they were issued to ensure that all the information he'd provided was correct. But I can't see that he told Advantage that any corrections were needed.

Mr J answered "No" to the question. And he's explained that this was due to a careless error as he had three points on his licence for a speeding offence committed the previous year. And I think this means Mr J failed to take reasonable care not to make a misrepresentation when he said he had no previous motoring convictions.

Advantage has provided evidence which shows that if Mr J had not made this misrepresentation it would have at least charged him a higher premium. This means I am satisfied Mr J's misrepresentation was a qualifying one under CIDRA.

I also think Mr J's misrepresentation was a careless misrepresentation. This is because Mr J disclosed the conviction when he reported his car's theft. And I think Advantage reasonably concluded this had been a careless oversight.

Therefore, as the misrepresentation was careless and Advantage would have charged a higher premium if Mr J hadn't made the misrepresentation, under CIDRA it will have to consider the claim and settle it proportionately if it accepts it.

Advantage has provided evidence from its underwriting guide to show that if Mr J had not made the misrepresentation then it would have charged him a premium increased by 16%. I can't share this evidence with Mr J as it's commercially sensitive. But I can assure him that I've checked it carefully. And I can see that the increased premium was calculated with the change in risk details added.

Mr J said that he'd found quotes for cover with the penalty disclosed that led to a lower premium increase. He's said that he'd provide us with evidence of these quotes as Advantage has been unable to verify them, but he hasn't done so. So I can't say that this shows that Advantage's proportionate settlement was unfair.

Mr J also thought that the proportionate settlement led to a "draconian" reduction in the settlement. But, although I can empathise with Mr J's position, I can't agree that Advantage has made an error in this as it was made in keeping with CIDRA and based on the ratings from its underwriting guide at the time. It's not for us to tell an insurer how to rate risks.

Mr J also thought that if he'd known what Advantage would charge if he had disclosed the penalty then he wouldn't have taken out the policy. But I'm satisfied that Advantage provided

a quote for Mr J's policy based on the information he provided. I can't reasonably hold it responsible for his not taking reasonable care to answer its clear questions.

And so – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Advantage to rely on it to settle Mr J's claim proportionately produces the fair and reasonable outcome in this complaint.

Mr J was also unhappy with delays in the settlement being paid. Advantage has a responsibility to deal with claims fairly and promptly. So, like the Investigator, I've considered Mr J's claim journey. I can see that there was some initial delay whilst Advantage sought information to validate the claim. But I can't see that this was avoidable.

But there was three weeks' delay when Advantage had all the needed information, but it didn't refer this to its underwriters for a decision. I think this was avoidable. And I can see that Advantage also accepts that its communication with Mr J could have at times been better.

Advantage paid Mr J £75 compensation for the inconvenience caused by its level of service. And I think this was fair and reasonable as I'm satisfied that this was in keeping with our published guidance for the level of impact of its errors. So I don't require it to do anything further.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 6 September 2024.

Phillip Berechree
Ombudsman