

## **The complaint**

Mr and Mrs R have complained that Advantage Insurance Company Limited voided their home insurance policy and declined a claim they made.

Reference to Advantage includes its agents and representatives. And as Mrs R has primarily dealt with things, I'll refer to her, on behalf of Mr and Mrs R, for ease of reading.

## **What happened**

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- Mrs R took out a home insurance policy, underwritten by Advantage, in 2023. She later got in touch with Advantage to make a claim for damage caused by a burst pipe.
- Advantage voided the policy – which means treating it as if it never existed – and, as a result, declined the claim.
- When taking out the policy, Mrs R was asked whether she'd made a claim recently. She said she'd made a claim in 2022 with her previous insurer. She was then asked *"how much was paid out for this claim? If you're unsure, give your best estimate"*. She said £5,000. Advantage said around £25,000 was paid out, so Mrs R ought to have provided a higher estimate. And, if she'd done that, Advantage wouldn't have offered the policy.
- Mrs R complained. She said she was asked to give her best estimate – and that's what she did. She thought about how many days the builders were working at her home, what their daily rate might have been, and added on materials. She also took into account the extent of the damage and nature of the work.
- Advantage maintained its position on the policy and claim. However, it accepted it had given incorrect information during a phone call and offered Mrs R £100 compensation as a result.
- Our investigator thought Mrs R had taken reasonable care when answering the question, so the complaint should be upheld. He asked Advantage to reinstate the policy and consider the claim.
- Mrs R accepted this outcome, but Advantage didn't. It reiterated the points it had already made and also questioned whether Mrs R had guessed, rather than estimated, her answer. Our investigator wasn't persuaded to change his mind, so the complaint has been passed to me.

## **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 relevant law for this situation is the Consumer Insurance (Disclosure and Representations) Act 2012 (or “CIDRA”). It places a duty on the consumer, in this case Mrs R, to ‘take reasonable care not to make a misrepresentation’. In summary, if Mrs R fulfilled that duty, Advantage can take no action. If she didn’t fulfil that duty, and Advantage can show that it would have acted differently if she had fulfilled that duty, CIDRA sets out the remedies available to Advantage.
- To decide whether Mrs R took reasonable care, the starting point is to consider the question she was asked. I’ll then go on to consider whether Advantage has shown she failed to take reasonable care when she answered it.
- Mrs R took out the policy through a comparison website. Advantage says it’s not responsible for the questions asked by the website, but I disagree.
- Advantage sold a policy through the website and the website isn’t an independent intermediary. Whilst Advantage may not have specifically chosen the questions – for example, if it agreed to use a set of standard questions the website asks all customers, regardless of which insurer they may take out a policy with – Advantage has nonetheless agreed to sell a policy by using those questions. So, in my view, that makes Advantage responsible for the questions asked.
- The question was made up of two parts. The first part asked Mrs R how much was paid out for the claim. I think this is a matter of fact, although it’s unclear which fact Mrs R was being asked to provide – was it the amount paid out to her, or the amount the insurer paid contractors for the repair work, or the total amount the insurer paid for the claim, including things like investigation costs?
- I think Mrs R understood it to be the second option, given what she’s said about how she tried to estimate the amount. Advantage has provided a copy of the Claims and Underwriting Exchange (“CUE”) record, which shows the previous insurer recorded a claim value of around £25,000. Advantage has used that figure throughout, so it seems to have wanted Mrs R to estimate the third option. This difference highlights the ambiguity of the question, which I’ll take into account.
- The second part told Mrs R that if she was unsure, she should give her best estimate. I don’t think it’s in dispute that Mrs R was unsure, as she’s said she didn’t know the amount. This means the second part adapted the first part to move away from a matter of fact and to instead ask Mrs R to give her ‘best estimate’ for how much was paid. Mrs R was entitled to take the question at face value and the reasonableness or otherwise of her answer is to be considered in the context of the exact question she was asked. Had the question contained only the first part, and remained a matter of fact, that may have led to a different outcome – but it did contain the second part, and that’s relevant as it significantly changed what Advantage asked Mrs R to think about. Nonetheless, I consider the estimate should have been a reasonable one. The onus is on Advantage to show it wasn’t.
- Advantage has given a number of reasons to support its view that Mrs R’s estimate was unreasonable. I’ll summarise and number them for clarity:
  1. Mrs R had a report from the previous claim which estimated the cost at £30,000.
  2. The length of the claim, nature of the work, and amount of parties involved in it should have given Mrs R reason to estimate a higher amount.
  3. She could have checked her ‘completion of works paperwork’.

4. She could have checked with her previous insurer.
  5. She could have checked CUE.
  6. Mrs R 'guessed' the answer.
- I'll consider each point in turn, then summarise my opinion about whether Mrs R took reasonable care in the circumstances.
  - I understand the report was written at the outset of the previous claim by a company handling it for the previous insurer. Its 15 pages of text are primarily concerned with the cause and restoration of the damage. On page 14, it says: "*estimated loss restoration value ... <£30,000*". I can't see any other reference to the likely claim value. At the time it was written, repairs hadn't begun, and the estimate doesn't seem to be based on something accurate, like a schedule of work. In my view, this meant it was little more than an outline estimate of the likely maximum claim cost the previous insurer could expect to incur. I'm not persuaded Mrs R should have seen it as an estimate of the actual cost of the claim or repairs. And given it was one line within a much bigger report, with no other mention of claim costs, I'm not persuaded it would be fair to expect her to recall it when taking out insurance many months later.
  - Advantage's second point is expecting Mrs R to have an in depth understanding of the likely cost of building repairs and how the nature and extent of them, together with the number of parties involved, can impact the cost of a claim. I'm not persuaded that level of understanding is something a consumer should be expected to have – especially as some of the work included decontamination, which is likely to be much harder for a consumer to estimate than, say, redecoration. I think Mrs R was aware of the work involved, thought about its likely cost, but she didn't appreciate quite how expensive it would be – which is understandable, as she has no reason to. I think this highlights the inherent risk and difficulty of asking a consumer to estimate something that most people are unlikely to be able to do accurately.
  - I don't know what Advantage means by 'completion of works paperwork' and it hasn't provided any evidence to support this point. So I don't find it persuasive.
  - On point four, I agree Mrs R *could* have checked the amount with her previous insurer. But I don't think the question required her to, or suggested she should do so, because it asked her to give her 'best estimate'. That doesn't indicate she should have found out the factually correct answer, but that her own, reasonable estimate would suffice. If Advantage had wanted Mrs R to check with her previous insurer, it could have simply asked her to do so.
  - My view on the fifth point is similar. I understand it's possible for a consumer to ask CUE for their own claims information. So, again, this is something Mrs R *could* have done – but it wasn't something Advantage required her to do, or suggested she should do, for the same reason as above. Also, I don't think most consumers would be familiar enough with CUE to think about accessing it. And, if Advantage wanted Mrs R to check CUE, it could have asked her to do so – or it could have checked CUE itself. I recognise Advantage isn't required to check CUE. So I'm not saying that's something it *had* to do – only that it was an option available to Advantage.
  - I note Advantage discussed Mrs R's answer with her, prior to voiding the policy, in order to understand the reason for her answer. I think this was the fair and reasonable way to approach things, as it gave Mrs R a chance to give her version of events before a decision was made. I note she used the word 'guess' during the call. But I don't think from the context of the wider point she was making that she

deliberately chose this word instead of 'estimate' to mean she hadn't thought about her answer. I think she was conveying the difficulty of trying to estimate the amount and spoke colloquially, so it would be unfair to take that one word out of context and overly literally.

- Taking all of this together, I think it's helpful to summarise the situation:
  - Advantage seems to have wanted Mrs R to give the factually correct answer of how much the previous insurer spent on the claim. It's entitled to ask for that information if it wishes and could have done so.
  - Advantage also seems to have expected Mrs R to check with her previous insurer and/or to check CUE. It's entitled to ask for that information if it wishes and could have done so. It could also have checked CUE itself.
  - But Advantage only asked Mrs R to give her best estimate of the amount and was ambiguous about what that amount should represent.
  - It's inherently difficult for most consumers to accurately estimate how much an insurer spent on a claim, as they're unlikely to have detailed knowledge and understanding of the costs involved.
  - Advantage doesn't offer policies where a consumer has had a recent claim and the value is above a certain threshold. Advantage has chosen a relatively low value threshold, which it's entitled to do, but that means it's more likely a consumer will find themselves above it – but without knowing that such a threshold exists. That can have significant consequences for a consumer, as Mrs R has found out. So I'd expect Advantage to take steps to minimise the risk of consumer detriment. I'm not satisfied it's done so in Mrs R's case.
- Overall, this means I haven't been persuaded by Advantage that Mrs R failed to fulfil her duty to take reasonable care. I'm satisfied she gave her 'best estimate', as Advantage asked her to. As a result, Advantage can take no action.
- To put things right, Advantage should reinstate the policy and consider the claim in line with the terms and conditions of the policy. I understand Mrs R has had the repairs carried out because the policy was voided and the claim was declined, so Advantage will have to take that into account when considering the claim.
- In line with our usual approach, Advantage should also remove any reference to the voidance from any internal and external databases. And, if not done so already, Advantage should pay the £100 compensation it offered.

### **My final decision**

I uphold this complaint.

I require Advantage Insurance Company Limited to:

- Reinstate the policy.
- Consider the claim in line with the terms and conditions of the policy.
- Remove any internal or external reference to the policy voidance.
- Pay £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 28 October 2024.

James Neville  
**Ombudsman**