

## The complaint

Mr K has complained that Advantage Insurance Company Limited unfairly and unreasonably cancelled his motor policy because it believed he hadn't disclosed a modification to his car.

## What happened

Advantage reviewed Mr K's policy midway through the policy year. It saw there was a spoiler on the back of the car. It said it investigated this and decided it wasn't a standard feature of his make and model of car. It also said its underwriting guide classed this as a modification which rendered the risk unacceptable. On the basis it didn't know of the existence of this spoiler at the time Mr K applied for his policy that meant Mr K didn't disclose it. And if he had disclosed it, it would have refused to offer him a policy. So, on that basis Advantage classed Mr K's non-disclosure as careless, so it cancelled his policy as if it never existed.

Mr K thought this was most unfair. He thought that because the spoiler was a manufacturer optional extra that meant it wasn't then classed as a modification. And when applying for his policy he didn't consider a manufacturer optional extra was the type of modification which needed to be disclosed or highlighted.

So, Mr K brought his complaint to us. Ultimately the investigator didn't think Advantage had done anything wrong so she didn't think Mr K's complaint should be upheld. Mr K was aggrieved that there was no leeway on such a decision as he hadn't intentionally failed to disclose anything. And having to declare a policy was cancelled would increase his premium for any insurance policy going forwards. So, on this basis his complaint has been passed to me to decide.

I issued a provisional decision on 30 October, and I said the following:

*'Having done so I'm partially upholding this complaint, I'll now explain why.*

*I do have some sympathy with Mr K over not realising his car was actually modified given its age and the difficulty of several previous owners so never knowing who might have added what and whether whatever was added was classed as an accessory or optional extra and whatever else. Furthermore, as in Mr K's case some of these additions became popular and therefore sought after, enhancing the value and more so the appeal of the car.*

*And yes, the issue of what is and what isn't a modification can be confusing too. Spoilers of any description though tends to be something of a red flag. I've asked Advantage to show me the question Mr K was asked. It says the following:*

*'Has the car been modified in any way?*

*This includes fitting it with any optional extras such as changes to the bodywork, engine, or wheels.*

### More information about modifications

What counts as a modification?

*A vehicle has been modified or adapted if it's been changed from the manufacturer standard specification in any way.*

*Examples include:*

- *changes to the bodywork including spoilers and/or body kits*
- *changes to the suspension, brakes, engine or exhaust system*
- *cosmetic changes such as alloy wheels, paint, stickers or decals.'*

*I consider this is a clear question and I consider the examples given are wide enough to put a question mark in the reasonable consumer's mind that any sort of spoiler on the car could possibly not be a manufacturer standard specification. I appreciate Mr K's honesty in his correspondence with us and how he now understands what this question was asking of him. In real terms it's not for any consumer in Mr K's position to make a decision themselves as to what type of spoiler should be or should not be declared when asked about them. More so, when like here the word 'spoiler' is specifically mentioned. If Mr K was in any doubt, it was always open for him to ask Advantage any questions.*

*This is because the law concerning this issue is quite onerous on both the consumer and the insurer. The law concerning the duties of both consumers and insurers is set out in the Consumer Insurance (Disclosures and Representations) Act 2012. The duty on the consumers is to answer all of the questions asked in the application form by the insurer honestly and truthfully. And the consumer is under a duty to take reasonable care not to make any misrepresentation. The duty on the insurer is to ask clear questions. As I've said above, I consider Advantage did ask a clear question. And as we know Mr K didn't give the correct answer to the question asked. There's no dispute about that.*

*CIDRA provides a series of remedies to the insurer depending on whether the misrepresentation was made by the consumer carelessly or deliberately. Advantage rightly in my view decided that Mr K did not make a deliberate misrepresentation, rather it was careless instead.*

*On this basis, CIDRA provides different remedies to the insurer depending on what the insurer would have done if the consumer had answered the questions correctly and given the right information. If the insurer would have never offered a policy at all if it had known the correct information, then the insurer is entitled to cancel the policy as if it never existed. When the consumer has given the wrong information carelessly, then the insurer must return the full premium paid. If the insurer would have given different terms or possibly a different premium price, then it should offer those terms and premium price to the consumer who can then decide whether or not to accept the policy on those different terms or whether to cancel the policy themselves.*

*Here, Advantage said had it known the type of spoiler that was on Mr K's car, it wouldn't have offered him any policy at all. This is because its underwriting guide doesn't provide any cover for cars with spoilers like Mr K's car had. Insurers are entitled to decide what risks they want to insure and what risks they don't want to*

*insure. This is part of their commercial discretion, and this is permitted by the regulator, The Financial Conduct Authority. They are also under a duty to ensure that all consumers are treated fairly, with none of them being singled out and treated differently. Hence, the underwriting guide will detail all the risks the insurer wants to cover and all the risks it doesn't want to cover, so that the same issues affect people in the same way. That's the case here with Advantage.*

*So, Advantage is perfectly entitled to decide in Mr K's situation to cancel his policy as if it never existed. It should have however, returned the entire premium Mr K paid without any deductions for time on risk. I shall deal with this point later below. However, because CIDRA permits Advantage to make the decision that it has made in Mr K's case, there is no room for any negotiation over the matter as Mr K wishes. Advantage has no duty under this Act to entertain the type of things that Mr K has suggested. Consequently, I don't have any authority to insist or to require Advantage to do anything differently like Mr K would wish this service to do. Indeed, I don't have any authority to ever insist or require any insurer to insure anything they don't wish to insure, or to decide that it won't avail of the remedies available to it under CIDRA. I appreciate that Mr K believes this is very unfair and unreasonable, but this is what CIDRA says, and this is what the law permits Advantage to do in this situation.*

*However, Advantage didn't refund Mr K the full premium he paid for his policy. It merely refunded the premium less any time on risk. However, Advantage is actually cancelling this policy as if it never existed, therefore it has no legitimate time on risk. As a result, it has no authority to retain any premium for any time on risk. So, I consider that it should refund the remaining premium Mr K paid it with interest.'*

Advantage didn't respond. Mr K said he was disappointed, understandably. He also pointed to another case reported on social media where Advantage had done the same thing but had reinstated the policy in that case, or rather issued a new policy. He wished for some consistency from Advantage in these matters.

### **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 again, I remain of the view and reasoning as expressed in my provisional decision. It remains that Advantage is required to return the entire premium Mr K paid.

I do understand and appreciate Mr K's disappointment and annoyance. Further I can't comment on any other case, I can only consider this case and its facts.

## **My final decision**

So, for these reasons it's my final decision that I uphold this complaint in part.

I now require Advantage Insurance Company Limited to do the following:

- Refund Mr K the remaining amount of the premium he paid it, adding interest at 8% simple per year from the date Advantage cancelled his policy as if it never existed to the date that it refunds him. If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr K for HMRC purposes.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 December 2024.

Rona Doyle  
**Ombudsman**