

## **The complaint**

Mr B complains that Advantage Insurance Company Limited settled his motorcycle theft claim on a proportional basis.

## **What happened**

Mr B took out an insurance policy with Advantage to insure his motorcycle in September 2023. In March 2024, his motorcycle was unfortunately stolen, so he contacted Advantage to make a claim.

Advantage initially dealt with the claim and appointed a company to validate the loss. But they then identified that Mr B appeared to have a claim on his car insurance policy which they hadn't been told about when he took out the policy, despite them asking about previous claims. They also said his motorcycle's parking location was different to what had been disclosed.

Advantage said if they had been told about the previous claim, as well as where the motorcycle was parked, they would have charged a higher premium for the policy. They calculated that Mr B had paid 60% of what the premium would have been, so they settled his claim on a proportional basis and paid 60% of it. Mr B didn't think this was fair and complained. He didn't think he'd answered any questions incorrectly when he took out the policy, and he said the claim had been for an accident his wife was involved in which didn't have anything to do with him.

Mr B also said that Advantage had acted unfairly by changing the location where he parked his motorcycle. He said Hastings told him where his motorcycle was parked would not meet their definition of a garage. But Mr B disagreed and said when he was asked where his motorcycle was parked, the options didn't come with a complete definition list, and he chose the option that he felt was most suited to his circumstances. Mr B felt the questions asked weren't clear enough and went against the principles of the Financial Conduct Authority's (FCA) Consumer Duty.

Advantage responded to the complaint, but they didn't change their stance on how they dealt with Mr B's claim. They said they had asked clear questions when the policy was incepted about previous claims and where the motorcycle was parked. And they said the website Mr B used to take out the quote did provide definition lists which explained which option to use. They said their decision to settle the claim on a proportional basis was due to a non-disclosure of material facts and was in line with the available remedies under the Customer Insurance (Disclosure & Representation) Act 2012 (CIDRA).

Unhappy with their response, Mr B brought the complaint to this service. An Investigator looked at what had happened but didn't recommend the complaint be upheld. She felt that the questions asked were clear and agreed that Advantage had dealt with the claim in line with their available remedies under the applicable law – CIDRA.

Mr B disagreed with the Investigator's outcome. He said he didn't know he needed to disclose an accident that his wife was involved in, and he questioned why it was relevant to

his motorcycle policy to include claims that didn't involve him. He said while he was the policy holder, the claim was not made by him, and that a reasonable person in the same set of circumstances would not recognise that this question required them to include claims made by a spouse. Mr B said that advantage charging a higher premium on his motorcycle policy due to an accident his wife had been involved in in his car was unreasonable and shouldn't make any difference to his premium.

Mr B also said that where his motorcycle was parked was irrelevant; as due to organised crime and an ever-growing issue with thefts, it could have been locked in a shipping container, and if the thieves wanted to access it they would have done so by any means.

Mr B asked for an Ombudsman to consider the complaint – so it's been passed to me to decide.

### **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 not upholding this complaint. I appreciate this will be disappointing to Mr B – so I'll explain why.

As part of my review of this complaint, I'm required to consider relevant law and regulations, which here is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. The standard of care is that of a reasonable consumer.

If a consumer fails to take reasonable care, and does make a misrepresentation, 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 a consumer failed to take reasonable care to make a misrepresentation. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

When Mr B took out the policy with Advantage, he was asked a series of questions. The two relevant to this complaint were about any previous insurance claims, and where his motorcycle was parked.

Advantage says that Mr B didn't correctly answer the questions he was asked at application. So, I think the principles set out in CIDRA are relevant and it's fair and reasonable to apply these principles to the circumstances of Mr B's claim. That means I need to first consider whether Mr B took reasonable care not to make a misrepresentation when he applied for and took out the policy.

When considering whether a consumer has taken reasonable care, I need to decide whether the questions they were asked during the sales process were clear. Having looked at the questions asked, I'm satisfied they were clear enough to prompt a reasonable consumer to realise what Advantage was asking for.

In relation to previous claims, Mr B was asked *"Have you had any motoring accidents or claims in the past five years?"*. Displayed below this question was information which

provided additional clarification as to what was being asked, which said: *“this includes any accidents claims or losses made by you or against you on any vehicle irrespective of fault within the last five years”*.

I appreciate Mr B has said he did not consider that the claim his wife was involved in was relevant to this question, as his wife had been driving their car and she dealt with the claim, which was ultimately recorded as non-fault.

But importantly here, the test under CIDRA as to whether Mr B took reasonable care is one of a reasonable consumer, not one unique to Mr B. So, while I take on board what he’s said about his understanding of what he needed to disclose, I have to consider what I think a reasonable person would have answered when asked the question he was asked.

And overall, I think a reasonable consumer would understand that being asked about previous claims made on any vehicle, which included *“any accidents claims or losses made by you or against you”* would prompt them to disclose a claim which was made on an insurance policy held in their name. And even though Mr B’s wife was the person involved in this accident, the claim was made against his own policy, and would have been recorded as such on the Claims and Underwriting Exchange database (CUE).

This is standard industry practice for insurance claims and explains how Advantage were able to locate it. I’m therefore satisfied that this demonstrates Mr B didn’t accurately declare his claim’s history at the time of sale. It follows that I think he made a misrepresentation when he answered this question.

The second question Mr B was asked was where his motorcycle was parked. Mr B was asked to choose the most appropriate option for his circumstances and chose “locked garage” which also contained an explanatory note that said:

*“Locked garage - a locked structure for housing motor vehicles such as cars or motorbikes. It should be constructed of brick concrete steel or stone and on private property. This should be a garage used only for you and people living with you not a shared garage for multiple residences.”*

Advantages said that Mister B should have instead chosen the option for “car park” – and the explanatory note which describes this said:

*“A public, commercial, or residents only car park including parking under flats. Car parks can be in closed or open and free or fee paying.”*

I’ve considered the information Mr B has provided about his understanding of his parking situation. He’s said he owns a parking bay in the under-croft private resident’s car park of his property. He explained that the car park can only be accessed by those with a permit and coded key fob, which controls the electrically locked security gates, preventing access to the garage for cars or pedestrians.

Having considered the definitions provided, as well as the evidence Mr B has kindly supplied, I think a reasonable consumer would understand that where Mr B parked his motorcycle was not a locked garage. I say this because the definition of a locked garage specifically says it should be used only for the policyholder and people living with them, and not shared by multiple residences. But the evidence Mr B has supplied clearly shows the car park is a resource shared by other residents. It follows that I think he made a misrepresentation when he answered this question.

As I'm satisfied Mr B made a misrepresentation when he took out his motorcycle policy by answering the questions asked incorrectly, I've then gone on to consider whether I'm satisfied that Mr B made a 'qualifying' misrepresentation under CIDRA. Advantage has provided underwriting evidence which shows they would have charged a higher premium if they had known about the previous claim and parking situation. I do appreciate this is something Mr B has asked for a copy of, however as it is considered commercially sensitive, I can't share it.

But I have reviewed it thoroughly, and I'm satisfied it demonstrates that Advantage would have charged a higher premium. I can also understand Mr B feels the location of his motorcycle shouldn't make a difference to the price of his policy. But while I understand Mr B thinks the 40% reduction is disproportionate, it's important to note that as the FCA doesn't regulate on the price insurers charge or how they assess risk, this Service can't make judgements about the level at which an insurer sets their premiums, or the criteria used to calculate them.

As it stands, the available evidence shows Advantage would have charged a higher premium. And this means I'm satisfied Mr B made a qualifying misrepresentation under CIDRA. It follows that I think Advantage is reasonably entitled to apply the relevant remedy available to them.

Advantage has classified Mr B's misrepresentation as careless. And based on the evidence I've seen; I think that was a reasonable position for Advantage to take. I say that because I don't think Mr B intended to mislead Advantage – instead he didn't take enough care to ensure he answered their question correctly.

CIDRA says, in cases of careless misrepresentation, that an insurer is entitled to rewrite the policy as if they had all of the information they wanted to know at the outset. CIDRA says:

*"... if the insurer would have entered into the consumer insurance contract..., but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.*

*"Reduce proportionately" means that the insurer need pay on the claim only X% of what it would otherwise have been under an obligation to pay under the terms of the contract... where:*

*$X = \text{Premium actually charged} / \text{higher premium} \times 100.$*

I'm satisfied that based on what I've seen; Advantage was reasonably entitled to settle Mr B's claim proportionately. And as Mr B paid 60% of the premiums Advantage would have charged, they're entitled to pay 60% of the claim. I find that Advantage has fairly settled the claim in line with the remedy available to them under CIDRA.

I also appreciate Mr B says he feels the process followed by Advantage did not fully adhere to the principles of fairness and consumer protection under the FCA's Consumer Duty.

However, having considered all the available evidence as part of this complaint, I'm satisfied the questions asked were suitably clear and weren't unusual or unfair, for the reasons I've previously given. And as I don't find that Advantage dealt with the claim unfairly, I don't think their service fell short of what would be expected.

So overall, whilst I sympathise with Mr B's position, and I recognise he has suffered an unfortunate loss which would have had an impact on him, I think that Advantage has settled

his claim in line with the relevant law and industry guidelines. And this means that I'm not directing them to pay anything more.

I appreciate Mr B has requested a refund of his premiums between the date his motorcycle was stolen until the date the policy ended. He's also said Advantage charged him an additional premium of £14.86 due to amending his motorcycle's overnight parking location.

Advantage have confirmed these issues weren't raised to them as part of his complaint, so they weren't included in the final response Advantage issued. This means I'm unable to consider them as a complaint point as part of my decision. And Mr B would need to raise them separately as part of a new complaint.

## **Conclusion**

I do appreciate my decision will come as a disappointment to Mr B and I fully appreciate his frustrations over having his motorcycle stolen. I was very sorry to hear about the impact he says this has had on him, including worrying about future thefts, and I can sympathise that this would be a concern.

But my role is to determine whether Advantage have acted fairly and reasonably. And having done so, I find Advantage acted fairly in proportionately settling the claim. This means I don't think they need to do anything more than they have already.

## **My final decision**

For the reasons given above it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 February 2025.

Stephen Howard  
**Ombudsman**