

## **The complaint**

Mr M has complained that Advantage Insurance Company Limited avoided (treated it as if it never existed) his motor insurance policy.

## **What happened**

Mr M took out a motor insurance policy with Advantage through an online price comparison site. He then called Advantage to make a change to his policy and it found out that his car was an import. Advantage said it didn't cover imports. So it avoided his policy and returned the premiums he'd already paid.

When Mr M complained, it said he'd answered the question he'd been asked about whether his car was imported incorrectly which entitled it to avoid his policy. But it said its system should have identified that the car was an import. After the complaint came to us, Advantage paid Mr M £100 compensation for the trouble caused and offered to consider any additional costs Mr M incurred for taking out a like for like policy..

Mr M brought his complaint to us, and our Investigator thought Advantage didn't need to do anything further. He thought there had been a qualifying misrepresentation which was careless. And so he thought Advantage was entitled to avoid the policy and return the premiums, which it had done. And he also thought its offer of compensation was fair and reasonable.

Mr M replied that he didn't know the car was imported and he'd answered the question about this to the best of his ability. He said £100 compensation was insufficient for the trouble and losses caused. Mr M asked for an Ombudsman's review, so the complaint has come to me for 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.

Advantage said it avoided Mr M's policy because he'd provided incorrect information in his application. So I'm satisfied that 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. But, in that case, it must refund the premiums.

Advantage thinks Mr M failed to take reasonable care not to make a misrepresentation when he stated in his application via a comparison site that his car wasn't imported. 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:

*"Is the car imported?"*

And further information was provided about how to decide this:

*"If the car was made to be sold in a country outside the UK and was then imported to the UK, it's classed as an import".*

And I think this was a clear question asked by Advantage through the comparison site Mr M used.

Mr M answered "No", and he's explained that this was because he'd bought the car from a dealer and had no reason to think it was imported. But I can see that the car was clearly an import and I think Mr M should have reasonably realised this or asked if he was unsure.

And I think this means Mr M failed to take reasonable care not to make a misrepresentation when he said the car wasn't imported.

Advantage has provided evidence which shows that if Mr M had not made this misrepresentation it wouldn't have offered cover at all. This means I am satisfied Mr M's misrepresentation was a qualifying one under CIDRA. I also think Mr M's misrepresentation was a careless one as I haven't seen evidence that he deliberately set out to mislead Advantage.

Therefore, I'm satisfied Advantage was entitled to avoid Mr M's policy in accordance with CIDRA, but it should return his premiums, which it has done. And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Advantage to rely on it to avoid Mr M's policy produces the fair and reasonable outcome in this complaint.

But Advantage agreed there had been an error. It said that its system should have flagged that the make and model weren't available in the UK and so the sale wouldn't have proceeded. When a business makes a mistake, as Advantage accepts it has done here, we expect it to restore the consumer's position, as far as it's able to do so. And we also consider the impact the error had on the consumer.

Advantage avoided the policy after one day's cover and refunded the premium in full. This was recorded as a cancellation by Mr M (which is to his advantage) and not recorded on external databases and so there's no need for him to disclose this to future insurers and it won't affect future premiums. So I think that restores Mr M's position as he shouldn't have been provided with cover in the first place.

Mr M then had the trouble of taking out alternative cover. Advantage offered to consider any additional costs he incurred because of this. But Mr M has confirmed that there weren't any. Mr M said he'd lost work as he couldn't drive whilst uninsured. But I think Mr M could have taken out alternative cover and so mitigated his losses. So I can't hold Advantage responsible for this.

Mr M was put to some trouble and upset for a short period. And I think Advantage's payment of £100 compensation is fair and reasonable compensation for the impact of its error as it's in keeping with our published guidance where a single error has a short-term impact. I don't require Advantage to increase this.

### **Putting things right**

I require Advantage Insurance Company Limited to pay Mr M £100 compensation for the trouble and upset caused by its administration of his policy, as it's already offered to do.

### **My final decision**

For the reasons given above, my final decision is that I uphold this complaint in part. I require Advantage Insurance Company Limited to carry out the redress set out above, as it's already offered to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 February 2025.

Phillip Berechree  
**Ombudsman**