

## **The complaint**

Miss P complains that Advantage Insurance Company Limited (“Advantage”) declined to pay her claim and cancelled her policy because she hadn’t told it about modifications to her car.

## **What happened**

Miss P had a motor insurance policy with Advantage covering her car. She bought the policy through a comparison website.

In July 2023, her car was stolen following a burglary on her home. It wasn’t recovered. She contacted Advantage and made a claim.

Advantage looked into her claim and offered her a valuation of about £45,000. Miss P had paid considerably more than this about a year beforehand and she complained. Advantage said she needed to provide more information about why her car should be valued higher.

Miss P provided the information to Advantage. The car had been modified by a company before Miss P bought it. It’d had a bodykit fitted, including the front and rear bumpers, as well as things like bigger wheels and the name of the company replaced the manufacturer’s name on places like the bonnet. Some of the modifications were part of the manufacturer’s extended specifications and the car was advertised as being of a type that denotes a high-end sports version of the particular make and model.

Advantage said Miss P had misrepresented this information when she’d applied for cover. It cancelled her policy from inception and wouldn’t pay her claim.

She complained to Advantage about its service during her claim and the decision it made.

Advantage said it would pay her £100 compensation for delays.

Miss P brought her complaint to this service. Our investigator looked into it and thought it would be upheld. He thought Miss P was reasonably unaware of the modifications to her car, so she hadn’t misrepresented to the best of her knowledge. He said Advantage should pay her claim and add £250 compensation for its poor service.

Advantage didn’t accept the view. It said the adverts from when Miss P bought the car showed it was modified and Miss P had provided evidence to it showing the car was modified when she’d asked for a higher settlement amount.

Because Advantage didn’t agree, this complaint has been passed to me to make a decision.

I issued a provisional decision intending to uphold Miss P’s complaint in part, but only in as much as I thought Advantage should pay her compensation for her distress and inconvenience:

*Having read the file of evidence, I’m intending to uphold Miss P’s complaint, but it’s important I say I’m not going to ask Advantage to pay her claim. I anticipate this will be a significant disappointment for her, and I’ll explain why I’m proposing to decide this.*

*The starting point here is The Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out 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.*

*Advantage has shown this service evidence that shows it wouldn't have accepted Miss P's car in cover if it'd known about the bodykit when she'd applied for cover. What this means is Miss P made a qualifying misrepresentation.*

*CIDRA also sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.*

*CIDRA says a consumer needs to take reasonable care not to make a misrepresentation when taking out an insurance policy and then sets out what Advantage can do if Miss P didn't take reasonable care.*

*I've looked at the process Miss P went through when she originally applied for cover.*

*On the price comparison website I can see Miss P replied "No" to the question: "Does the [car] have any modifications?"*

*Help is provided via a pop up saying:*

*"What does this mean?*

*If you or a previous owner has made a change from the manufacturer's original specification, such as alloy wheels, air conditioning, bodywork, exhaust system, suspension or tinted windows, add it here. If you're unsure if your car's been modified, check its previous history to find out."*

*I'm satisfied that the question, and explanation, is clear.*

*Miss P's car had been modified from the original specification. When Miss P asked a main dealer which had previously serviced her car, it told her that the car was delivered in one specification and then likely modified by the specialist company, before it was retailed to Miss P by another motor dealer.*

*I've looked at some pictures of the car and the modifications appear subtle in nature. As I've said above, the bodywork modifications that Advantage objected to can apparently be bought from the manufacturer. The advert posted by the retailer starts by saying "[vehicle model brand] [modifier brand] Factory specification..." and lists a range of features on the car that may or may not have been on the car when it was manufactured, but are representative of high-end luxury vehicles.*

*Advantage's file included a note saying Miss P told it she wasn't aware of the modifications and that the manufacturer told her "that only someone with vehicle knowledge would have known as it's just the bumpers".*

*In its objection to the view, Advantage has pointed out that it thinks Miss P was aware of the*

*modifications as she provided it with evidence that her car was, in fact, modified. This information came from the documents provided to Miss P by the retailer presumably at point of sale. One of the documents says "This vehicle certifies that the vehicle below has been modified by..."*

*It also said the name of the branding company had replaced the manufacturer's brand in an obvious location. Clearly that's a modification to the standard specification.*

*And it's this combination of evidence about the modifications that had been carried out that, I think, is central to the question about whether Miss P was aware that her car was modified and hence should she have told Advantage.*

*I can see from the file that Miss P was deliberately looking for the specific brand of car because it had a specific feature she was looking for. I've said above that this manufacturer displays its name in a prominent position across the front of the car.*

*And Miss P's car had obvious and different branding in this location.*

*Given that I feel Miss P could not have been unaware of this branding, it follows that I think she should have taken more care to check her car's status when she applied for cover, and looked more carefully at the sales documentation she had. It follows that I think she did misrepresent her car's details when she asked Advantage for cover.*

*From that point, the outcome of this complaint is led by CIDRA.*

*If Miss P told Advantage that her car was modified, further questions would then be asked of her. And given that the sales documentation included information about the bodykit that was fitted, Advantage wouldn't have accepted her car on cover. I've said above that this is a qualifying misrepresentation.*

*The remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.*

*Advantage has treated this as a careless misrepresentation and I think that's fair. That means Advantage may treat the policy as void – in other words as if it had never existed – since it wouldn't have sold the policy if there hadn't been a misrepresentation.*

*What this means for Miss P is that, under CIDRA, Advantage can cancel her policy from the beginning, and because her policy never existed, it doesn't need to pay her claim. In this situation, CIDRA also says Advantage should also return her premium. I asked Advantage about this and it said it hadn't refunded her premium. So my provisional decision is that I intend to uphold Miss P's complaint, but only in the respect that Advantage now needs to return her annual premium to her.*

*I've also looked at the service Miss P had during her claim, and I can see there were delays likely caused by Advantage's investigation. I agree it wasn't particularly good service of Advantage. It's said it would pay Miss P £100 compensation for this, and I think that's fair as most of the distress caused to her was likely because of its decision to not pay her claim. So I'm not going to ask it to pay more.*

## **Responses to my first provisional decision**

Advantage accepted my provisional decision. Miss P responded. She said she hadn't seen an advert for the car, as she'd been viewing a similar one when the salesperson said they knew of another one somewhere else being sold by a family member at another dealership.

She said she bought the car with the manufacturer's brand across the bonnet and there was no mention of the modifier's brand.

In July 2023, following the theft of her car, she investigated the car and found out that it was modified, and the modifier sent her the proof of this around that time, and she sent that proof on to Advantage as part of her evidence of its value.

I issued a second provisional decision intending to require Advantage to settle Miss P's claim:

*I've reviewed Miss P's evidence carefully and compared it with the information provided by Advantage. What I can see is that Advantage was able to supply an image of Miss P's car showing the modifier branding, with an associated advert, from around the time she bought the car.*

*Miss P has sent this service a photo of the front of her car from about December 2022 showing it was manufacturer-branded. She's also sent us some information about the circumstances of the car shortly before she bought it, which included some details about it being partially repainted (including the bonnet) due to some previous malicious damage.*

*I've said above that she was shown the car via a different route than searching online, so I don't think there's evidence that she saw the advert Advantage supplied.*

*She's also sent the email she received from the modifier, which I can see arrived after the car was stolen.*

*Taking all this into account, I've thought carefully about Miss P's situation. Her version of events seems clear to me and she's explained what happened during her journey to buy the car.*

*I've mentioned above that the bodykit modification was subtle in nature, and was a part that was provided by the manufacturer for that type of car. Miss P was looking for that car in particular and when she found it, showing the manufacturer branding, I think it's fair I say she might not have realised the work that'd been done on it.*

*On balance, I'm persuaded by her comments that she didn't reasonably know the car was modified. What this means is that I now think Miss P took reasonable care when she answered the questions on the comparison website.*

*In turn, what this means is that I don't reasonably think Miss P made a qualifying misrepresentation, and the outcomes under CIDRA no longer apply.*

*What now needs to happen is that Advantage should settle Miss P's claim for the theft of her car in line with the remaining terms and conditions of her policy. Interest at 8% simple should be added to the settlement amount, from the date it originally offered her settlement, to the date it makes this payment.*

*Miss P will need to pay her premium for that period in line with Advantage's policy terms. It's my understanding that Advantage retained her premium, so I'd ask the parties to liaise around this point and deduct outstanding amounts as needed.*

*If Advantage recorded its cancellation of Miss P's policy on any databases, it needs to remove or update these records accordingly.*

*I've no doubt Miss P has suffered substantial distress and inconvenience during her claim*

*and subsequent complaint. As I've written above, I'm intending to deal with her complaint on balance, so while I do think Advantage should have dealt with its investigation of her claim better, resulting in delays to her claim, I can understand why it reached the decision it did on the evidence in hand.*

*Having read Miss P's explanation of the events of her claim, I'm intending to require Advantage to pay Miss P a further £250 compensation for her distress and inconvenience in addition to the £100 it's already paid her.*

## **Responses to my second provisional decision**

Advantage said it didn't agree with my second provisional decision. It looked at the evidence supplied by Miss P and said it believed Miss P was misleading this service by supplying us with limited evidence that should be disregarded.

## **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've thought about Advantage's response carefully. But I don't think it changes my decision that it needs to settle Miss P's claim.

As I mention above, I find Miss P's version of events persuasive. There are several elements of her story about purchasing the car that fit together with the documented evidence in the file.

Advantage has raised a considerable objection about how pieces of this evidence were obtained by Miss P and then sent to this service. I'll mention that it's provided information from the company which modified the car, but I don't think it's relevant because Miss P didn't buy the car from that company. From the information I have, I don't reasonably think Miss P knew or understood the relevance of that modifying company until after the car was stolen.

It's again mentioned the original advert showing the modifier's branding. Again, there's no evidence that Miss P saw this advert, or any other advert for the car.

There's a witness report in which Miss P told the police that: *"I would describe my vehicle as a black, customised body kit..."*. Advantage says this evidence together means Miss P's version of events should be disregarded by this service.

But I don't agree. I think Miss P has shown that she wasn't reasonably aware of the modifications to her car. So, when Advantage asked her the question when she applied for cover, I think it's fair I say she didn't misrepresent her answer.

What this means is that, on balance, I don't reasonably think Miss P made a qualifying misrepresentation, and the outcomes under CIDRA no longer apply.

What now needs to happen is that Advantage should settle Miss P's claim for the theft of her car in line with the remaining terms and conditions of her policy. Interest at 8% simple should be added to the settlement amount, from the date it originally offered her settlement, to the date it makes this payment.

Miss P will need to pay her premium for that period in line with Advantage's policy terms. It's my understanding that Advantage retained her premium, so I'd ask the parties to liaise around this point and deduct outstanding amounts as needed.

If Advantage recorded its cancellation of Miss P's policy on any databases, it needs to remove or update these records accordingly.

I've no doubt Miss P has suffered substantial distress and inconvenience during her claim and subsequent complaint. As I've written above, I'm intending to deal with her complaint on balance, so while I do think Advantage should have dealt with its investigation of her claim better, resulting in delays to her claim, I can understand why it reached the decision it did on the evidence in hand.

Having read Miss P's explanation of the events of her claim, I require Advantage to pay Miss P a further £250 compensation for her distress and inconvenience in addition to the £100 it's already paid her.

### **My final decision**

It's my final decision that I uphold this complaint. I require Advantage Insurance Company Limited to:

- Settle Miss P's claim on the remaining policy terms. Interest at 8% simple should be added to the settlement figure, from the date the original settlement amount was offered, to the date this amount is paid. If Advantage Insurance Company Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss P how much it's taken off. It should also give Miss P a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.
- Pay Miss P additional compensation of £250 for her distress and inconvenience.
- Update any databases to show Miss P's policy wasn't cancelled by it.

Advantage Insurance Company Limited must pay the amount within 28 days of the date on which we tell it Miss P accepts my final decision. If it pays later than this, it must also pay interest on the amount from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 13 March 2025.

Richard Sowden  
**Ombudsman**