

The complaint

Mr K has complained about Advantage Insurance Company Limited's decision to avoid his van insurance policy and refuse his claim.

Mr K is represented by his father, who I'll refer to as Mr R to avoid any confusion.

This complaint was set up against Hastings Insurance Services Limited originally, but the correct business is Advantage because it is the insurer who provided Mr K's policy. And Hastings acted on its behalf.

What happened

Mr K made a claim for damage to his van following an accident in December 2024. First of all the van was taken to one of Advantage's approved repairers for repair. They decided the van was a total loss and it was collected by Advantage's salvage agent, who I'll refer to as C. It is not clear exactly what the sequence of events was from the information Advantage has provided. But Mr K has said he didn't hear anything until 24 January 2025. It seems he then received a telephone call from C saying that the settlement amount for his claim was £10,462.50. He then appears to have told C that it would cost him more than this to replace his van. And that C then emailed him on 24 January 2025 and said he would need to provide three internet adverts to demonstrate this.

Instead of providing adverts, Mr K emailed C later the same day and told them he was due to collect a replacement van tomorrow. And he asked it to transfer the £10,462.50 to his bank account as soon as possible. It seems he then received a letter from C saying that a settlement amount had been agreed for his van on behalf of Hastings. And the letter also said the information in it was provided on a without prejudice basis and subject to Hastings' approval. And that C would now pass on the information (presumably on the settlement amount agreed) to Hastings, together with his bank details to enable them to issue payment.

Mr K then received a letter from Hastings, dated 24 January 2025, the next day saying that his policy had been avoided due to his failure to let them know about a fixed penalty offence when he renewed his policy in June 2024. And that, because of this, Advantage would not be paying his claim.

Mr K complained to Hastings, who dealt with his complaint on behalf of Advantage. They didn't uphold it. And in the final response letter they said that Mr K had received his renewal documents via his online account. And that he'd been asked to check the information in the Statement of Insurance was correct. And because this information said he didn't have any motoring convictions or fixed penalty offences he should have told them that this was wrong. They further explained that if Advantage had known about Mr K's fixed penalty offence it wouldn't have offered him the policy and that this meant it was entitled to avoid it and refuse his claim.

Mr R then referred Mr K's complaint to us. When doing so he explained that he considered the decision to avoid Mr K's policy was harsh, as he had only committed a very minor traffic offence. He also said that in his opinion Mr K's acceptance of C's offer of settlement on

24 January 2025, before he was told by Hastings that his policy was being avoided, constituted a legally binding agreement that Advantage was bound by. And that Hastings had ignored his emails on this point. He also mentioned a third issue regarding the fact that C registered Mr K's van as a total loss when it had no right to do so.

One of our investigators considered Mr K's complaint. He said he was satisfied Hastings (on behalf of Advantage) was entitled to avoid Mr K's policy and refuse his claim. He also explained to Mr R that he did not think the fact Mr K had agreed a settlement amount for his van with C prior to Hastings telling him his policy was being avoided affected Advantage's right to avoid it. Although, he said this issue and the issue with the van being registered as a total loss would need to be formally considered as a separate complaint because Mr K hadn't raised them as complaint points with Advantage prior to Hastings issuing the final response on 30 January 2025.

Mr R (on behalf of Mr K) hasn't accepted the investigator's view. So, Mr K's complaint has been referred to me for a final decision. Mr R has said he still thinks that Advantage is bound by the offer C made to settle Mr K's claim, as C never actually withdrew it before Mr K accepted it. And, as far as he is concerned, the avoidance of the policy is irrelevant to this.

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 in this case is The Insurance Act 2015 (the Act) and not The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) as suggested by Hastings and our investigator. The reason that the Insurance Act is the relevant law is that, as I understand it, Mr K used his van mainly for business purposes. So, when doing renewing his policy through Hastings, he was not what CIDRA defines as a consumer, which is an individual who enters into a contract wholly or mainly for purposes unrelated to the individual's trade, business or profession. However, essentially, the responsibilities of the customer and anyone acting on their behalf are the same as under the Act as they are under CIDRA.

The Act requires the insured (the policyholder) to make a fair presentation of the risk they want the insurer to cover before entering into the contract (the policy). And if the insured fails to do this. And the insurer can show that this is what the Act refers to as a qualifying breach, it has certain remedies which depend on whether the insured's failure was deliberate or reckless or neither deliberate nor reckless. If the failure is neither deliberate nor reckless and the insurer can show that, if the insured hadn't failed to make a fair presentation, it wouldn't have entered into the contract (offered the policy) on any terms, this will be a qualifying breach and the insurer will have the right to avoid the policy and refuse all claims under it. The Act also says that if the qualifying breach was neither deliberate nor reckless, the insurer should return the premium that the customer paid to them.

However, Mr K is what might be best described as a less experienced commercial customer, who wasn't formally represented by a commercial insurance broker. So, in determining whether he made a fair presentation I've considered whether Advantage made the importance of providing correct information when he renewed his policy and the consequences of not doing so clear to Mr K. This is because if it hadn't done this, I may not consider it would produce a fair and reasonable outcome to allow it to rely on the Act to avoid Mr K's policy.

Effectively, Advantage thinks Mr K failed to make a fair presentation of the risk he wanted it to insure when he failed to contact it to amend the information on the renewal documents he

was provided with via his online portal. So, I've looked at the documentation Mr K was provided with and whether Advantage asked him to confirm or amend this information. And I think it did ask him to do this. I say this because in the renewal letter Hastings sent to Mr K, on behalf of Advantage, it said Mr K's renewal quote was based on the details in the Statement of Insurance attached and that he needed to let them know if anything had changed. And at the start of the Statement of Insurance it said Mr K needed to read and check the information shown carefully, that it represented his policy based on details from the previous year and that if any of these details were incorrect or had changed that Mr K should contact Hastings immediately. It also warned Mr K of the consequences of not doing so; saying that it could invalidate his insurance cover and result in a claim not being paid.

The Statement of Insurance stated that Mr K didn't have any driving related convictions, endorsements, fixed penalties, disqualifications or bans in the past five years. But Mr K did not contact Hastings and let them know this was incorrect and that he had received an endorsement for a fixed penalty offence in February 2024. In the circumstances, I am satisfied Mr K did fail to make a fair presentation of the risk to Advantage before entering into the contract with it, i.e. before taking out his new policy at renewal in June 2024.

Although, I can't share it with Mr K or Mr R for commercial reasons, I have seen evidence from Advantage which shows it wouldn't have offered the policy to Mr K if he had let Hastings know about his fixed penalty offence, i.e. it wouldn't have entered into the contract with him at all. And this means that under the Act Advantage was entitled to avoid his policy and refuse his claim under it. Therefore, I'm satisfied that due to Mr K's failure to make a fair presentation in accordance with his duty under the Act Advantage didn't need to pay anything in respect of his claim. And I note that – effectively – it considered Mr K's failure to provide a fair presentation was neither deliberate nor reckless and returned his premium, which was the right thing for it to do.

I have noted Mr R's point that Mr K had a legally binding agreement with Advantage because he effectively accepted C's offer of settlement in respect of his claim. And, while I appreciate our investigator said this needed to be considered as part of Mr K's other complaint, I think it needs to be considered as part of this one. I say this because it is directly related to whether Advantage was entitled to avoid Mr K's policy and whether it was entitled to refuse his claim. And that's what this complaint is about.

I think there are two aspects for me to consider with regards to the settlement amount put forward by C, which Mr K accepted. The first is whether C putting forward this settlement amount resulted in Advantage affirming the contract (policy) Mr K had with Advantage. I say this because, if it did, I think it would mean that Advantage had waived its right to avoid Mr K's policy. The second is, irrespective of this, whether C's settlement proposal and Mr K's request for it to pay the amount concerned as soon as possible constituted a legally binding agreement between Mr K and Advantage.

I don't think the settlement proposal put forward by C means Advantage affirmed the contract Mr K had. This is because when C put forward its settlement proposal I do not think it made a formal offer to Mr K. I think it just let him know what the settlement amount on his claim would be and asked him whether he wanted to accept it. I think Mr K effectively did say he wanted to accept it, although he actually only said he wanted C to pay the settlement amount into his bank account as soon as possible. And, at this point, C sent Mr K a letter confirming it had agreed settlement with him. But this letter made it very clear this was on a without prejudice basis and subject to Hastings's approval, i.e. that it was not an offer on behalf of Hastings or Advantage; it was merely an agreement on the settlement amount that would be paid if Hastings (on behalf of Advantage) agreed to settle Mr K's claim. This means I do not consider that C making this offer at a time when Advantage knew about Mr K's failure to make a fair presentation means Advantage affirmed the contract Mr K had with it.

Therefore, I don't think it affected Advantage's right to avoid Mr K's policy.

And because it was clear from what C said in the letter that the settlement amount Mr K had accepted was without prejudice and subject to H's approval, I do not consider there was a legally binding agreement between Mr K and Advantage to pay the settlement amount he'd agreed. I appreciate Mr K had indicated his acceptance of the settlement amount, but I think it was clear from C's approach and actions that it did not intend it to be a final offer of settlement for his claim.

In the circumstances, despite my natural sympathy for Mr K's position, in that a seemingly minor oversight led to his policy being avoided and his claim refused, I am satisfied that he did fail to make a fair presentation of the risk in accordance with his duty under the Act. And that this did give Advantage the right to avoid his policy and refuse his claim. I'm also satisfied that nothing Advantage or its agents did before Hastings communicated its decision to avoid Mr K's policy impacted its right to do this and refuse Mr K's claim.

My final decision

For the reasons set out above, I've decided not to uphold Mr K's complaint about Advantage Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 27 October 2025.

Robert Short
Ombudsman