

complaint

Miss M is unhappy that Advantage Insurance Company Limited cancelled her car insurance. She's also unhappy with the service she received.

background

Miss M took out car insurance with Advantage in December 2017. The total cost of cover was £3,318.62 and was to be paid for by monthly instalments. There was another driver named on the policy too. (He was initially a co-complainant; but has now been removed from the complaint because he's not an 'eligible complainant' under our rules in relation to the acts or omissions complained of. This administrative change is purely a jurisdiction technicality and makes no practical difference to the ultimate outcome.)

Advantage wrote to Miss M in a letter dated 28 February 2018. It said it needed some information from her: her annual mileage and planned use; copies of the front and back of her driving licence and that of the named driver; her unique licence codes and vehicle registration form. The letter also said the policy would be changed or cancelled on 7 March 2018 if Advantage hadn't heard from her.

Advantage sent Miss M a further letter dated 14 March 2018. This reiterated that it needed information and said the policy would be changed or cancelled on 21 March 2018 if it hadn't heard from her.

Miss M told us that she didn't receive these letters until 22 and 25 March 2018 respectively. As Advantage hadn't heard from Miss M, it cancelled her policy on 22 March 2018.

Miss M was stopped by the police on 25 March 2018 as she was driving without insurance. Her car was impounded; she was fined £300; and six points were added to her licence. Because of this, she had her licence revoked under the Road Traffic (New Drivers) Act 1995 and she also had to go to court.

Miss M contacted Advantage on 26 March 2018. During this call, it was found that Advantage held an incorrect telephone number for her. Miss M raised a complaint. This was upheld in part as Advantage recognised there had been some service failings such as delays in calling Miss M back; a delay in providing a copy of the sales call; and because it didn't ask for her correct telephone number during the sales call. It offered compensation of £75 for what went wrong. But Miss M wasn't happy with this – so came to us.

Our investigator considered this complaint. She said that Miss M had admitted to receiving one of the letters prior to driving the car, so could've done more to check that it had been sent in error, as she'd thought was the case. But the investigator felt that the letters were ambiguous and didn't make the consequences of not providing information on time clear enough. She thought an award of £750 was fair in the circumstances. Miss M agreed with this.

Advantage said it would be willing to increase its offer of compensation to £175, and later to £275, but didn't think that £750 was warranted. It said it gave clear notice of what could happen if the consumer didn't contact it by the date given. So the complaint has been passed to me to consider.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've decided to uphold this complaint – and I'll explain why.

I can see that things went wrong on both sides when the car insurance was set up. Miss M made Advantage aware that the mobile number it held for her was an old number and seemingly wasn't given the opportunity to change this. But this meant that Miss M knew Advantage didn't have her current mobile number. The statement of insurance that was sent to her showed a mobile number, which was presumably her old one. So I think there was some onus on her to reiterate to Advantage that this information was out of date. Indeed, the documentation asks the policyholder to get in contact immediately if any of the details are incorrect or have changed. And, if Miss M hadn't received a policy schedule or other documentation relating to her insurance policy, I think it would've been reasonable to expect her to have contacted Advantage to establish the whereabouts of her documentary proof of her being legal to drive. Unlike most types of insurance, it's mandatory to hold at least third-party motor insurance. And I think most people are aware of this.

Having the correct telephone number on file may have meant that Advantage could've called Miss M and made her aware of the severity of the consequences of not providing information. But I think there was fault on both sides in relation to an incorrect telephone number being on file. I can't safely say that having the correct number on file would have led to a different overall outcome. I note that Advantage made an offer on compensation for what went wrong here.

I think the crux of this complaint relates more to the letters and the resulting cancellation of Miss M's policy. Advantage said it sent the letters on 28 February and 14 March 2018. They were correctly addressed and I haven't seen sufficient information to think there was an issue with the postal system. But, looking at the information Advantage was requesting, I can't see why Miss M would've had a problem sending this. Advantage asked for information such as her expected mileage for the year and documentation any driver would hold or be able to obtain. So I can't see a good reason why Miss M would've opted not to send the requested information had she received the letters and understood the consequences of not doing so.

Ultimately, I can't say when the letters were received. While I can't see a good reason for Miss M not to send the information, it's possible that she received the letters around the time one would generally expect her to have done and chosen not to respond. But it's also possible that she received them when she said she did and believed there to have been an error so didn't get in touch with Advantage. But, in my opinion, whether they were received around the time one would generally expect, or when Miss M says she received them doesn't make a difference to the compensation that I think is due in this case. I'll explain my reasons for this below.

In the letter dated 28 February, Advantage asked for information. It said that if Miss M didn't provide it by 7 March, her policy would *either* be changed or cancelled. Seemingly, Miss M's payment was taken on 5 March and nothing happened on or around 7 March, despite the information not being provided. So the promised consequences didn't happen.

Instead, a second letter dated 14 March was sent asking for the information again. And it said that if the information wasn't received by 21 March, the policy would be *either* changed or cancelled. The next contact is a letter dated 23 March which said the insurance had been cancelled. The terms and conditions of the policy say "*we may give you seven days' notice of cancellation*" which sounds as though it's an option Advantage has that it may or may not take. It then follows with "*We and your insurer can cancel your Policy at any time by sending the Primary Policyholder seven days' written notice to the last postal or email address on our system*". This statement sounds far less optional and makes it sound as though a consumer *would* be given this notice ahead of cancellation. It then immediately follows with "*...stating why the Policy has been cancelled*". This would suggest that by the time the notice has been received, it's too late to do anything to stop the cancellation as it '*has been*' cancelled. I would think that giving notice would mean giving advance warning, before the event, to allow for preparations to be made. So I find the policy terms and correspondence to be confusing and contradictory.

I think Miss M has lost out as a result of unclear and ambiguous communications which, given the potential implications, should have been drafted plainly and intelligibly (in line with consumer-protection laws and regulations, e.g. Consumer Rights Act 2015 and its predecessor statutory instruments). Had Advantage written, in its letter of 14 March, to say that it hadn't been sent the requested information so her policy *would be cancelled if the information wasn't received by 21 March*, I'd be minded to think differently. There would be no ambiguity here and no indication of a less draconian outcome such as the policy just being amended. This would also correspond with the policy terms and conditions, as Miss M would've been given a period of seven days' notice before her insurance policy was cancelled. And this notice would've allowed her to take steps to prevent the cancellation from happening (or obtain alternative cover elsewhere or not drive uninsured).

Miss M has explained that she received one of the letters before making the journey that led to her licence being revoked. So there was more she could reasonably have done here to prevent or mitigate her losses. She said she believed an error had been made as she'd made a payment and hadn't received a call from Advantage. I suspect there was also some confusion around the fact that 7 March – the date the letter said her policy would either be changed or cancelled – had passed without consequence. But she ultimately chose to drive without checking, despite there being a strong indication she should do so. And this means that she drove without insurance, which is an offence of strict liability (i.e. the act alone is enough to convict with no need for intent or recklessness) – and an offence which is commonly known to be serious, so one shouldn't drive without the requisite certificate of insurance as proof of cover. And it's because Miss M's own acts or omissions contributed to the situation that I've opted to award £750 rather than more.

As a consequence of everything that's happened, Miss M had her car impounded, lost her driving licence, was fined £300 and had to go to court. The situation may cost her significantly in the long-term through increased premiums, reapplying for a driving licence, etc. Miss M is not blameworthy, as indicated above. But I think the ambiguity of Advantage's letters was the proximate cause of her losses, hence the need for a more than modest award.

my final decision

For the reasons given above, I uphold Miss M's complaint against Advantage Insurance Company Limited and require it to pay her £750, less any compensation it's already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 25 March 2019.

Melanie Roberts
ombudsman