

## **complaint**

Mrs T had two car insurance policies. She complains that Advantage Insurance Company Limited cancelled the wrong one, leading to her being stopped by the police and later convicted of the offence of driving without insurance.

## **background**

Mrs T and her husband have two policies with Advantage. They own two cars which they both use interchangeably. At the relevant time, each was the policyholder of one of the policies and the named driver on the other. Advantage is the underwriter of the insurance policies, and as such is responsible for the complaint, although Mrs T has mainly dealt with another company acting as Advantage's agent. When I refer to Advantage in this decision, I'm including its agent.

In November 2016, Mr and Mrs T owned two cars, which I'll call cars A and B. They sold car A and replaced it with a new one, car C. They kept car B.

Mrs T rang Advantage to tell it about this, intending to cancel the insurance on A and replace it with a new policy on C.

When she spoke to Advantage, she quoted the wrong policy number – using the car B policy number rather than the car A policy number – when she first explained what she wanted to do. She was then transferred to another adviser. During the conversation with the second adviser she set up the new policy on car C and referred to selling car A (quoting its registration number) and cancelling its policy. Mrs T didn't realise that she had initially quoted the wrong policy number, and Advantage's second representative didn't realise that the registration number Mrs T quoted didn't match the one on the policy he cancelled.

As a result, Advantage cancelled the insurance on car B – not the insurance on car A. So Mr and Mrs T carried on paying for insurance for a car they didn't own, and Mrs T drove car B uninsured.

Some time later, Mrs T was stopped by the police while driving. As she was uninsured, the car was seized and impounded and Mrs T was prosecuted.

Mrs T had to arrange a policy with another company to get the car out of the police pound, as Advantage doesn't offer insurance in those circumstances.

Advantage accepted it had made a mistake in cancelling the wrong policy, not checking which one needed to be cancelled and not noting that the registration number Mrs T quoted didn't match the policy number she'd given. It also said that its process of cancelling one policy and replacing it with another, rather than amending the vehicle on an existing policy, meant Mrs T would have had no way of knowing from the new policy documents which of the existing policies had been cancelled.

Advantage gave Mrs T a letter she could use in court. Mrs T was convicted of the offence of driving without insurance and had six points added to her driving licence. But because of the letter from Advantage she wasn't required to pay a fine.

Advantage said it would cover the cost of increased insurance premiums for the next five years as a result of the conviction. And it said it would pay her £75 compensation because it had given wrong information about which cars were insured after she was stopped by the police. It later offered £200 for Mrs T's trouble and upset in having to go to court and receiving a conviction.

Mrs T complained to the Financial Ombudsman Service. Our investigator said that Advantage should pay compensation of £2,500, as well as reimbursing Mrs T for the expenses she'd incurred, including increased premiums for insuring cars B and C now that Mrs T has a conviction.

Mrs T also said she was a named driver on her mother's car insurance, which had gone up as a result. Our investigator considered this, but explained that we couldn't award compensation for financial loss suffered by a third party. Mrs T accepted this.

Advantage said the compensation was excessive. It asked for an ombudsman to review the complaint.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There was clearly confusion here, which led to the wrong insurance policy being cancelled. So what I have to decide is who is responsible for that confusion – and whether Advantage needs to take steps to put things right.

When Mrs T called to tell Advantage about the sale of car A and the purchase of car C, she spoke to two advisers. She told the first one what she wanted to do, and was then put through to a second adviser to complete the application and process the changes.

She gave the first adviser the policy number for car B, then insured by her husband with her as a named driver, and gave Mr T's name and date of birth as the policy holder.

But when she was put through to the second adviser, she clearly said that she wanted to cancel the insurance on car A – identifying it with the registration number.

So I think Mrs T was confused about which policy she was cancelling, and quoted the wrong policy number. But she was clear about which car she was talking about. She gave the wrong policy number to the first adviser – who only took brief details and passed her on to the second adviser. She gave the right car details to the second adviser – who was the one who processed all the transactions involved.

I think it should have been obvious to Advantage that Mrs T had quoted the wrong policy number to the first adviser. The second adviser had been clearly told the registration number of the car that Mrs T wanted to cancel, and didn't check it against the policy number – even when Mrs T asked if it was necessary to confirm all the details at the end of the call.

So although Mrs T was initially confused about the policy numbers, I think the primary responsibility lies with Advantage. It's a legal requirement to have car insurance, and I think Advantage should have taken more care here. It should have been obvious to it that Mrs T wanted to cancel the insurance on car A, not car B, and that's what should have happened.

I'm satisfied that Mrs T wasn't knowingly driving without car insurance. She presented Advantage's letter to the court. But driving without insurance is a strict liability offence – meaning that Mrs T's knowledge and intentions are irrelevant. The simple fact is that she was driving without insurance, and so she was convicted and had six penalty points placed on her licence. The court took the circumstances into account in that it imposed a conditional discharge rather than fining her as well.

Taking everything into account, I'm satisfied that Advantage cancelled the wrong insurance policy. It accepts that once things had gone through, it would have been very difficult for Mrs T to have realised what had happened. I think it was Advantage's mistake that led directly to Mrs T's conviction.

I've taken into account everything that Mrs T's said about the impact this has had on her. When she was stopped by the police, she had her elderly mother and young son in the car with her. Being stopped by the police was in itself a difficult and very embarrassing experience for her – especially in front of her mother and son.

She then had to arrange to have her car released from the police pound and find emergency insurance. This was in a different part of the country to where she lived, where she and her son were staying with her mother.

As someone with no criminal convictions or blemishes on her driving record, Mrs T had to deal with the criminal process. Because of the circumstances, the court didn't deal with the case on the papers, so Mrs T had to attend court and explain what had happened in person. This was a stressful and traumatic experience for her.

She now has a criminal conviction, having previously been of good character. This is substantial damage to her reputation.

Mrs T has explained that she has found this whole period very stressful and it has left her feeling very anxious and nervous when she drives.

Taking all of that into account, I think the trouble, upset and loss of reputation Mrs T has suffered has been very significant. I'm satisfied that £2,500 is fair compensation in all the circumstances.

I also think Advantage should refund the costs Mrs T was put to. These are:

- £248.73 for emergency car insurance to release the car from the pound;
- £170 fees to release the car from the pound;
- £118.70 train ticket to attend court.

To these costs, Advantage should add simple annual interest of 8%, running from 17 February 2017 to date of settlement in respect of the first two, and from 13 April 2017 to date of settlement in respect of the third.

Mrs T has shown that both car B and car C are currently insured in her name, and that the premiums have gone up as a result. I think it's fair for Advantage to pay the increase in premiums that she's paid since the conviction. According to her broker, these are £163.52 and £105.28 respectively.

Mrs T will have to declare the conviction for five years. I think it's fair for Advantage to take account of that. However, I don't think simply multiplying the last premium increase by five would be fair. There are many variables – including changes to the car, the possibility that in future Mr T might be the policy holder and Mrs T a named driver, and the lessening impact of the conviction over time. I also bear in mind that Mrs T will have the benefit of the money up front even though she will be paying it out over the next five years. Therefore I think it would be fair for Advantage to pay upfront 50% of result of multiplying the last premium increase by five –  $163.52 + 105.28 = 263.80$ ;  $(263.80 \times 5) / 2 = £672.00$ .

### **my final decision**

For the reasons I've given, my final decision is that I uphold this complaint. I direct Advantage Insurance Company Limited to pay Mrs T:

- £3,172.00 – plus, if it is not paid within 28 days of the date we notify Advantage Mrs T has accepted this decision, simple annual interest of 8% running from the date of my decision to date of payment;
- £418.73 plus simple annual interest of 8% running from 17 February 2017 to date of payment; and
- £113.70 plus simple annual interest of 8% running from 13 April 2017 to date of settlement.

If Advantage considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs T how much it's taken off. It should also give Mrs T a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 15 February 2018.

Simon Pugh  
**ombudsman**