

The complaint

Mr H has complained that Advantage Insurance Company Limited proportionately settled his claim made on his motor insurance policy. He wants it to pay the full claim amount.

What happened

Mr H's motor insurance policy with Advantage renewed, but he didn't disclose a previous motoring conviction. When his car was damaged in an incident, he made a claim on his policy. Advantage said Mr H hadn't disclosed the speeding conviction from 2021. It said if he had, then it would have charged him a higher premium. So it settled Mr H's total loss claim proportionately by paying him 74% of the claim.

When Mr H complained, Advantage said he'd not corrected his renewal documents which said he had no motoring convictions. And that it considered this to be a careless qualifying misrepresentation, which entitled it to settle his claim proportionately. Mr H agreed he hadn't disclosed the conviction as he thought Advantage was aware of it. But he thought he should be asked to pay the additional premium, not have a proportionate settlement

Mr H brought his complaint to us, and our Investigator thought it shouldn't be upheld. She agreed there had been a qualifying misrepresentation. And she believed it was careless. And so she thought Advantage was entitled to settle the claim proportionately.

Mr H replied that he doesn't agree as the settlement was reduced by £3,800 when the additional premiums he should have paid were about £200. He thought Advantage hadn't settled the claim in his best interests.

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 can understand that Mr H feels frustrated by Advantage's decision about his claim. He's explained that this will have serious financial consequences for him. And I was sorry to hear this.

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.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

Advantage thinks Mr H failed to take reasonable care not to make a misrepresentation when he stated in his renewal documents that he had no driving related convictions. And I've looked at the question he was asked, and I agree he failed to take reasonable care. The Statement of Insurance has a box headed "Conviction History" stating:

"For all drivers named on this policy, we need to know of any driving related convictions, endorsements, fixed penalties, disqualifications or bans in the past five years."

The following entry for Mr H is "None disclosed".

On page 9 of his policy booklet, under Legal Obligations, Advantage explained:

"Under the Consumer Insurance (Disclosure and Representation) Act 2012, when you apply for insurance, you have a duty to take reasonable care to answer all questions as fully and as accurately as possible."

If you don't take reasonable care to answer all questions fully and accurately or if you deliberately make a false statement, there could be serious consequences. For example, depending on the circumstances, your Insurer might be entitled to treat your insurance cover and that of every other person named on your Policy as invalid. This could also mean that some or all of a claim may not be paid and you may have to make a payment to a Third Party (for example another driver or person involved in an incident) that's not covered by this insurance."

If the details on your documents are wrong, or if you wish to make any changes, please contact our customer services team. Their details are at the front of this document."

And on the Statement of Insurance, Advantage warned Mr H:

"Under the Consumer Insurance (Disclosure and Representations) Act 2012, you have a duty to take reasonable care to answer all questions fully and accurately. If you volunteer information over and above that requested you must do so honestly and carefully. If you don't answer all questions fully and accurately, it could invalidate your insurance cover and result in all or part of a claim not being paid."

So I think Advantage gave Mr H sufficient warning that he needed to check that he had provided accurate information. And I think Advantage made it clear on Mr H's renewal documents that it needed to know about his motoring convictions.

Mr H didn't disclose any convictions, but he had a speeding conviction in 2021. And so I think he should have disclosed this by contacting Advantage to correct the renewal documents. But he didn't. Mr H has explained that he thought Advantage would have been aware of this as it had his driving licence number. But I am not satisfied that this was reasonable as the conviction clearly wasn't stated on his Statement of Insurance.

And I think this means Mr H failed to take reasonable care not to make a misrepresentation when he said he had no motoring convictions within the previous five years.

Advantage has provided evidence from its underwriting guide which shows that if Mr H had not made this misrepresentation it would have at least charged him a higher premium. This means I am satisfied Mr H's misrepresentation was a qualifying one under CIDRA.

I also think Mr H's misrepresentation was a careless misrepresentation. This is because I haven't seen evidence from Advantage that he deliberately kept back information about the conviction.

Therefore, as this was a careless qualifying misrepresentation, I'm satisfied Advantage was entitled to settle Mr H's claim proportionately. It has shown evidence that Mr H paid 74% of the premium he would have paid if he had disclosed the conviction. Therefore, it is entitled to pay 74% of his claim.

Mr H thought Advantage's decision wasn't in his best interest. But I don't agree. This is because I'm satisfied that as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Advantage to rely on it to settle Mr H's claim proportionately produces the fair and reasonable outcome in this complaint.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 September 2023.

Phillip Berechree
Ombudsman