

## **The complaint**

Miss M and Mr R complain about Advantage Insurance Company Limited's ("Advantage") settlement of their claim.

Mr R has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any actions taken, or comments made, by either Miss M or Mr R as "Mr R" throughout the decision.

## **What happened**

Mr R made a claim under his policy after his car was stolen. Advantage looked into the claim and discovered that Mr R hadn't disclosed two motoring convictions when taking out the policy. So, Advantage reduced the claim settlement by 23%. Mr R felt this was unfair, so he complained about the settlement offer and about being given conflicting information about the offer.

Advantage responded and explained, when originally taking out the policy, Mr R didn't disclose details of two motoring convictions, and he also didn't correct these details in subsequent policy years. Advantage said, had Mr R disclosed this, then he would have been required to pay a higher premium, so the claim was settled on a proportionate basis. Advantage accepted they'd provided incorrect information about the claim valuation amount during a call with Miss M and offered £75 compensation.

Our investigator looked into things for Mr R. He thought Advantage hadn't acted unfairly in settling the claim proportionately and that the £75 compensation offered for the misinformation was fair. Miss M and Mr R disagreed so the matter has come to me for a decision.

## **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.

Having done so, I've decided Advantage's offer is a fair way to resolve matters. I understand Miss M and Mr R will be disappointed by this but I'll explain why I have made this decision. I think it's also important to address Mr R's request for a telephone call. I have considered this, and no discourtesy is intended, but I'm satisfied Mr R has clearly set out his points of dispute so I don't think it would be necessary in the circumstances to have a telephone call.

My starting point is Mr R's motor insurance policy which sets out the terms and conditions. In a section headed 'Your legal obligations' it says, *"...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...your insurer might be entitled to treat your insurance cover...as invalid. This could also mean that some or all of a claim may not be paid..."*

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) 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. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Advantage thinks Mr R failed to take reasonable care not to make a misrepresentation when he didn't disclose details of his driving convictions. The first point I've considered is whether Mr R took reasonable care not to make a misrepresentation. I've looked at the information Mr R was presented with during the sales journey, and this shows he was asked if he had any driving related convictions in the past five years. Documents were then sent to Mr R in November 2021 and December 2022 and Mr R was asked to check the details to ensure all information was correct. As an example of this, I've seen from the statement of insurance sent to Mr R in 2022, this asks Mr R to check all information carefully and to contact Advantage immediately if any of the details are incorrect. Further into this document there's a heading 'Conviction history' and beside Mr R's name it says, "*None disclosed*". While investigating the claim, Advantage discovered that Mr R had two driving convictions, one from October 2021 and another from April 2022. These hadn't been disclosed to Advantage. In this case, I think the question was clear and specific and the documents also made it clear that Mr R needed to check all details were accurate.

There's been a misrepresentation here but an insurer will only be entitled to take action if it's a 'qualifying misrepresentation' in accordance with CIDRA. So, I've now considered whether the information provided by Mr R amounts to a qualifying misrepresentation.

So, the next point I've looked at is whether the misrepresentation actually made a difference to Advantage. In other words, if the information Advantage received had been accurate, would they have offered the insurance policy at all or only on different terms - including whether they would've charged more.

The information shows Mr R paid a premium of £749.31. Advantage have provided information which shows, had Mr R disclosed details of his motoring convictions, the premium would've been £973.75. So Mr R paid 77% of what the premium should've been. So, given there's been a qualifying misrepresentation, there's been a claim and Advantage have demonstrated they would've offered a policy but charged a higher premium, CIDRA allows Advantage to proportionately reduce the amount to be paid to Mr R for his claim. In this case, Advantage have provided their calculations showing Mr R had paid 77% of the premium he should've been charged, so it's fair in the circumstances for them to reduce the settlement by 23%.

I can see Mr R says he was a named driver on the policy and, him being on the policy, was only a precautionary measure in the event of an emergency but he never drove the insured car as he has his own vehicle. I do acknowledge the points made by Mr R, but he is a named driver on the policy and his details have been taken into account when Advantage assessed the risk. Even though Mr R says he never drove the insured car, he's been included as a named driver so it's fair for Advantage to rate the policy on this basis. Mr R also says Miss M didn't think to ask about his points situation as he never drives the insured

car, and he says they weren't given the option to declare any traffic offences. As mentioned above, the documents which were sent to Miss M and Mr R did explain the importance of checking all details to ensure they're correct – and this shows there were no driving convictions. So, I think there was an opportunity here for Miss M and Mr R to check the details were accurate and to inform Advantage of any changes.

The information shows, had the driving convictions been disclosed, this would've led to an additional payment of £224.44 towards the premium, but Mr R says the difference to the settlement has been £10,842.47 – Mr R feels this is unfair. I do acknowledge Mr R's points, but the actions taken by Advantage are in line with the relevant legislation, so I can't say they've acted unfairly. I understand there has been a significant reduction to the settlement, but CIDRA allows Advantage to proportionately reduce the amount paid for the claim.

In relation to the part of the complaint about the misinformation, Advantage accept they got things wrong when they informed Miss M about a claim valuation which didn't factor in the 23% reduction. They acknowledge this led to disappointment when Miss M and Mr R received an amount less than what they were expecting. I agree this did lead to disappointment and I can see from claim notes provided by Advantage, Miss M and Mr R were upset by this and they explained to a call handler at Advantage the reduced amount wasn't the settlement amount which had been agreed. It's clear the misinformation had an impact on Miss M and Mr R, so I think it's fair that Advantage award compensation for this. Taking into account the impact and the duration of that impact, I think the £75 compensation offered is fair and reasonable in the circumstances.

I understand Miss M and Mr R will be disappointed, and I am very sorry to hear about the circumstances under which their car was stolen. I wish to reassure Mr R I've read and considered everything he has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

### **My final decision**

Advantage Insurance Company Limited have already made an offer to pay £75 compensation to settle the complaint, and I think this offer is fair in all the circumstances.

So my decision is that Advantage Insurance Company Limited should pay £75 to Miss M and Mr R, if they haven't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M and Mr R to accept or reject my decision before 5 June 2024.

Paviter Dhaddy  
**Ombudsman**