

The complaint

Mr L complains that Advantage Insurance Company Limited unfairly cancelled his motor insurance policy.

What happened

Mr L had a small car, first registered in 2014.

In late October 2022, Mr L went onto a price comparison website. He clicked through to an insurance intermediary and bought insurance.

Mr L got a policy with Advantage for the year from early November 2022. It was a comprehensive policy for social domestic and pleasure ("SD&P") and commuting. The cost was about £250.00, which Mr L paid in full.

Mr L had two jobs. His secondary occupation was as a delivery driver for a pizza company. His employer provided separate cover from a different insurer for Mr L's risk of liability to third parties while driving his car for pizza deliveries.

On about 11 January 2023, while Mr L was doing a pizza delivery in his car, it was involved in an incident involving a third party.

On about 18 January 2023, the third party or their insurer contacted Advantage to make a claim. Advantage spoke to Mr L who said that his employer's policy would cover the claim.

On 19 January 2023, Advantage gave Mr L seven days' written notice to cancel his policy with effect from 26 January 2023.

Mr L complained, through us, that the cancellation was unfair. We treat that as a complaint against Advantage, as it was ultimately responsible for the cancellation. Much of the complaint is about communications from the intermediary on behalf of Advantage. Insofar as I hold Advantage responsible for such communications, I may refer to them as communications from Advantage.

Advantage spoke to Mr L on 19 January and on about 23 January 2023. It said it wouldn't have provided cover if it had known he used the car for business purposes. By a form of final response dated 23 January 2023, Advantage told Mr L of his right to bring his complaint to us.

Mr L took out a new policy with another different insurer. He has sent us evidence of comprehensive cover for SD&P including commuting from 26 January 2023 at a cost of about £560.00.

our investigator's opinion

Our investigator recommended that the complaint should be upheld. He thought that the cancellation was unfair. He recommended that Advantage should:

1. remove any record of the cancellation; and
2. provide Mr L with a letter of indemnity to show prospective insurers; and
3. pay £150.00 to recognise the distress and inconvenience caused.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr L and to Advantage on 19 September 2023. I summarise my findings:

I wasn't minded that it would be fair to direct Advantage to pay Mr L compensation for the increased cost of the policy or for distress and inconvenience because:

- Mr L made a careless misrepresentation about his business use; and
- Mr L made a careless misrepresentation about his mileage; and
- Mr L didn't tell Advantage of his change of address; and
- In these ways, Mr L brought trouble on himself.

Nevertheless, I was minded that the cancellation was unfair

Subject to any further information from Mr L or from Advantage, my provisional decision was to uphold this complaint in part. I intended to direct Advantage Insurance Company Limited to write a letter to Mr L (which he may show to his current or future insurers) apologising for cancelling his policy unfairly, and confirming that it has removed any record of the cancellation from any external database on which it had recorded the cancellation.

Mr L responded to the provisional decision, in summary, as follows:

- When he took out the insurance policy, he was not made aware that he could not use his own car for delivery work, even with top-up insurance.
- Advantage cancelled the policy because of the claim. Since Advantage deleted the claim on the 21 July, it should also delete the record of cancellation.
- The intermediary didn't respond to his email of late July.
- He found it difficult to believe Advantage's statement that it couldn't see the top-up insurance on the motor Insurance database, so they would be responsible for any claim.

Advantage responded to the provisional decision in summary, as follows:

- If it were to treat the policy as void, that would be recorded on an external database.
- The cancellation has not been recorded on an external database.
- The case is being upheld in Mr L's favour on account of Advantage having provided a more favourable outcome.

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.

Consumer Insurance (Disclosure and Representations) Act 2012 ("CDRA") imposes a duty on a consumer to take reasonable care not to make a misrepresentation when taking out a

policy.

From its MOT history, I see that the car passed an MOT test in mid-December 2021 with a recorded mileage of under 10,000. That's a low mileage for a seven-year-old car.

I accept a statement from an Advantage senior underwriter as follows:

"We do not offer cover where the vehicle is used in conjunction with a delivery driving occupation."

From the way the comparison site works, I find that it asked Mr L a question as follows:

"What will the car be used for?"

That went further than asking Mr L whether he wanted to buy business cover. It was, in my view, a clear question about the use of the car.

I find that Mr L answered: "Social and commuting" instead of "Business use". I say that because the policy documents only covered SD&P and commuting.

The statement of insurance document included the following:

<i>"Employment Status</i>	<i>Employed</i>
<i>Primary occupation</i>	<i>Fitness Instructor</i>
<i>Industry</i>	<i>Leisure Centre</i>
<i>Employment Status</i>	<i>Employed</i>
<i>Secondary occupation</i>	<i>Delivery Driver</i>
<i>Industry</i>	<i>Food Store</i>
...	
<i>Insured vehicle details</i>	
...	
<i>Annual mileage</i>	<i>1,000</i>
...	
<i>Date purchased</i>	<i>12/2021"</i>

In my view, those details could only have come from Mr L.

I find that Mr L didn't take reasonable care not to make a misrepresentation to Advantage that he wasn't using the car for business use. I find it clear that he was – at that time - using the car for his employer's business of pizza delivery and intending to continue to do so.

I accept his statement that his employer had told him that it provided third party cover for that. But that doesn't persuade me that it was reasonable for Mr L to say that he wasn't using the car for business at all.

I consider that the misrepresentation about business use was careless and made a difference to Advantage. It wouldn't have offered cover to Mr L if he'd said he was using the car for pizza deliveries. So I consider that the misrepresentation about business use was a qualifying misrepresentation for CIDRA. And I wouldn't have found it unfair for Advantage to treat the policy as void.

I'm not satisfied that it was reasonable for Mr L to describe the pizza delivery business as a "Food Store" rather than as a restaurant or takeaway.

I find that in late October 2022, Mr L didn't take reasonable care to avoid making a misrepresentation to Advantage that his estimated yearly mileage was 1,000. That was unrealistic.

From its MOT history, I see that the car passed an MOT test in mid-December 2022 with a recorded mileage of over 55,500. So his total mileage between December 2021 and December 2022 was about 45,500 – an average of over 3,700 miles per month.

Advantage didn't mention CIDRA or treat its policy as void from the start. Rather, it took the course of cancellation, which I consider was less damaging to Mr L.

Nevertheless a cancellation by an insurer is damaging. So we expect an insurer to give the consumer seven days' notice and to follow the policy terms.

Unlike many motor insurance policies, the policy Mr L had didn't say that the insurer could cancel for "any good reason" or words to that effect.

Rather, the policy terms (referring to the intermediary as "we", and to Mr L as "you" and to Advantage as "your Insurer") included the following:

"Our rights to cancel your Policy

We may give you seven days' notice of cancellation

We and your Insurer can cancel your Policy at any time by sending you seven days' written notice to the last postal or email address on our system, stating why the Policy has been cancelled. We can only do this for one of the following reasons:

...

- You don't provide reasonable co-operation to us or your Insurer in order to allow us to process your Policy, or a claim, or to defend our interests*
 - Your Insurer is prevented from providing cover under this Policy by law or other reason*
 - You don't send us or your Insurer information or documentation that your Insurer reasonably requires to process your Policy, or a claim, or to defend their interests...*
- In certain circumstances we or your Insurer have the right to treat your Policy as if it never existed, without giving you notice or refunding your Premium. This will only apply if you make, try to make or where your Insurer reasonably suspects - misrepresentation which is deliberate and/or reckless..."*

From that, I note that Advantage had said that it would only cancel for one of a list of reasons.

At some time before late January 2023, Mr L changed his address. But I haven't seen any evidence that he told Advantage.

From what I've seen, Mr L hadn't reported the accident to Advantage in the week or so before the third party did so.

The notice of cancellation didn't include any reason. However, from Advantage's claim notes, I see that one of its underwriters confirmed by email that it wouldn't have offered cover if it had known Mr L used the car for delivery work; and on 19 January, Advantage passed that email to Mr L. So, on balance, I'm satisfied that Advantage gave Mr L the reason why it had cancelled his policy.

But the reason it gave wasn't the same as any of the reasons set out in the policy term quoted above. And Advantage hasn't made a case that the reason it gave was equivalent to one of those reasons.

For example, Advantage hasn't made a case that it was "prevented" from providing cover by reason of its own underwriting criteria. By way of a further example, Advantage hasn't made a case that Mr L hadn't provided reasonable co-operation to Advantage or information that it reasonably required in order to allow it to process his policy, or the claim, or to defend its interests.

As I'm not persuaded that the cancellation was in line with the policy terms, I find that the cancellation was unfair.

The policy documents from January 2023 show that Mr L had changed his address. Those policy documents also show that Mr L had increased his estimated yearly mileage to 5,000.

I don't doubt that – in addition to the consequences of the accident – the cancellation had adverse effects on Mr L. He had to have difficult conversations with Advantage, and he had to get a new and more expensive policy. I haven't seen enough evidence to show the extent to which the accident and the cancellation, respectively, had an effect on the cost of the new policy.

In any event, I don't consider that it would be fair to direct Advantage to pay Mr L compensation for the increased cost of the policy or for distress and inconvenience because:

- Mr L made a careless misrepresentation about his business use; and
- Mr L made a careless misrepresentation about his mileage; and
- Mr L didn't tell Advantage of his change of address; and
- In these ways, Mr L brought trouble on himself.

Nevertheless, I consider that the cancellation was unfair.

Responses to the provisional decision

Mr L has said that Advantage didn't communicate that he couldn't use his car for delivery jobs. However, I've found that Mr L had made a careless misrepresentation that he wasn't using the car for business. And the policy covered SD&P and commuting. So I don't find it unfair that Advantage didn't spell out to Mr L that he shouldn't use the car for pizza delivery work, even with the pizza company's "top-up insurance".

Mr L doubts Advantage's statement that such insurance didn't show up on the relevant database. However, I see that the pizza company's "frequently asked questions" included the following:

"OBU – Occasional Business Use

- *This part of the policy is intended to cover owner driver vehicles whilst on delivery only.*
- *The owners of these vehicles **must** have their own insurance policy; and*
- *The vehicles **must not** be added to the MID"*

So I accept that the motor insurers database didn't show the pizza company's policy as covering Mr L's vehicle.

Mr L has said that the claim caused Advantage to cancel the policy. However, I find that the claim caused Advantage to discover the use of the car for deliveries, and that was what led it to cancel the policy. I've said that the cancellation was unfair, and I will direct Advantage to write a letter.

Mr L sent us Advantage's email dated 21 July 2023 and his reply. He says that Advantage didn't respond. However, that is long after the complaint that Mr L brought to us. In any event, I've said that the cancellation was unfair, and I will direct Advantage to write a letter.

Advantage has said that – for Mr L - its cancellation wasn't as bad as treating the policy as void. However, Advantage had a choice as to the wording of the policy terms about cancellation- and it cancelled for a reason not in line with those terms.

Advantage has said that it could treat the policy as void. However, I find it likely that, if it does so at this late stage, then Mr L is likely to make a further complaint. I must not pre-judge the outcome of any such complaint.

Advantage has said that cancellation wasn't recorded on any external database. So I will amend the wording of the letter to give Advantage the option to confirm that.

Putting things right

I will direct Advantage Insurance Company Limited to write a letter to Mr L (which he may show to his current or future insurers) apologising for cancelling his policy unfairly, and confirming either that it hasn't recorded the cancellation on any external database or that it has removed any record of the cancellation from any external database on which it had recorded the cancellation.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Advantage Insurance Company Limited to write a letter to Mr L (which he may show to his current or future insurers) apologising for cancelling his policy unfairly, and confirming either that it hasn't recorded the cancellation on any external database or that it has removed any record of the cancellation from any external database on which it had recorded the cancellation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 20 November 2023.

Christopher Gilbert

Ombudsman