

## **The complaint**

Mr R complains Advantage Insurance Company Limited avoided his motor insurance policy (treated it like it never existed) and refused to pay his claim.

## **What happened**

Mr R took out a motor insurance policy with Advantage in January 2023. When his vehicle was stolen in May 2023, he tried to make a claim.

After investigating the claim, Advantage said Mr R had failed to tell it about a driving conviction from 2021 when he took out the policy. Advantage considered this a careless qualifying misrepresentation which entitled it to avoid his policy and decline his claim. And it returned the policy premium to Mr R. Mr R told Advantage he bought the vehicle policy late at night and must have missed the question due to needing to get back home. And he felt English not being his first language may have also caused confusion.

As Advantage didn't change its decision, Mr R brought his complaint to this service. He explained he made a mistake when he completed the application online which has led to several problems. This has impacted him both financially and mentally. Further, at no point, was he notified of the error by Advantage until he made a claim. He says he's never driven a car with the wrong insurance and wouldn't do this when a substantial amount of money had been used to buy this vehicle for work.

The Investigator looked into matters. They agreed there had been a careless qualifying misrepresentation, so, Advantage was entitled to take the steps it had. Mr R doesn't agree with this and said he'd prove this has been a change to what he really wrote. As an agreement couldn't be reached, the matter was passed 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 must tell Mr R I think the investigator has reached a fair outcome here. So, I don't uphold his complaint in this matter. I'll explain why.

The relevant law here 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. The standard of care is that of a reasonable consumer. If they fail to do this, the insurer has remedies provided the misrepresentation is – what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation, the insurer must show it would've 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 says Mr R failed to take reasonable care not to make a misrepresentation when he answered questions about previous driving offences. I've reviewed the questions asked when Mr R applied for his policy online and an extract is below.

*'Have you committed any driving offences or had any fixed penalty notices in the last 5 years? If you don't tell your insurer about previous offences, your [vehicle] insurance may not pay out if you make a claim'.*

Advantage made it clear how important it is to answer the question correctly. I've also seen this was emphasised on the front page of the welcome pack and statement of insurance. Mr R's answer to this question was 'No' when this wasn't correct.

Advantage has sent this service evidence it would never have offered cover if it'd been given the correct information about Mr R's previous conviction. So, I'm satisfied Mr R's representation was a qualifying one. Advantage considers Mr R's representation was careless and I see no reason to interfere with this.

As I'm satisfied Mr R's representation should be treated as a careless qualifying misrepresentation, I've looked at the actions Advantage can take in accordance with CIDRA. And I agree it was entitled to avoid Mr R's policy from the inception of it (the beginning). As this means - in effect - his policy never existed, Advantage doesn't have to deal with Mr R's claim following the theft of his vehicle. And it has returned the policy premium to him.

Mr R says he made a mistake which Advantage should've discovered before the claim. And he blames the time of the day as well as a language barrier for this. I don't see things the same way. Mr R was obliged to provide accurate information in his answers, taking care not to make a misrepresentation. This is irrespective of the time it was bought. If Mr R was unclear about anything he had the opportunity to obtain assistance or contact Advantage to clarify matters. Further, he was sent the information he'd given when completing the online application and had the opportunity to check this. So, whilst I appreciate the significant impact the avoidance is having, I don't uphold this complaint against Advantage.

### **My final decision**

I don't uphold Mr R's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 11 January 2024.

Rebecca Ellis  
**Ombudsman**