

## **The complaint**

Mrs G has complained that Admiral Insurance Company Limited (Admiral) has both undervalued her vehicle and imposed a proportional settlement of this valuation following a total loss claim when her van was deemed a write-off after an accident.

## **What happened**

Mrs G was involved in an accident and her van was written off. Admiral initially made an offer of around £8,000 for the van, which Mrs G didn't accept. Admiral then revised its offer and offered Mrs G £9,675. But Mrs G remained unsatisfied.

However, when Admiral inspected the van it came to light that the back windows were tinted. Admiral says it hadn't been made aware of this modification, and if it had known the windows were tinted, it would've asked for an additional premium. Admiral has calculated that Mrs G has only paid 94.79% of her premium, so it's only prepared to offer Mrs G a pro-rata settlement of the valuation it placed on her van, which amounts to £9,171.50.

But Mrs G doesn't agree that the tinted windows warrant a higher premium. She wants Admiral to pay 100% of the amount she thinks the van is worth. She's provided a Parkers valuation of £11,205 and she says she paid over £12,000 for the van less than 12 months previously. She believes the correct pre-accident value is £11,400.

I issued a provisional decision upholding this case in January 2021. That provisional decision is below and forms part of my final decision.

## ***What I've provisionally 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'm planning on upholding this complaint. I'll explain why.*

### ***Type of insurance***

*The Certificate of Insurance attached to this file shows that Mrs G had a comprehensive van insurance policy with Admiral which covers her for social, domestic and pleasure purposes only. The notes on the file show that Mrs G is not registered for VAT payment purposes and she's confirmed that she didn't claim VAT back on the purchase of this van. This is a private van insurance policy, and not a commercial van insurance policy.*

### ***Van valuation***

*Mrs G is unhappy with the valuation that Admiral has placed on her van. Our approach is to consider whether Admiral has settled Mrs G's claim in line with the terms and conditions of her policy, fairly and reasonably. So, I have considered the terms of the policy and the offer made in order to determine whether Admiral have acted fairly. I can see that in the event the van can't be repaired, Admiral won't pay more than the market value of the van at the time of*

the loss.

*Market Value is defined as "The cost of replacing your vehicle, with one of a similar make, model, year, mileage and condition based on market prices at the time of the loss. Use of the term 'market' in which you would normally shop for a vehicle e.g. Retail value, will not apply if you bought your vehicle privately or at an auction. Non-European manufactured vehicles will be valued based on European import values or the nearest British equivalent".*

*Our usual approach to complaints about car or van valuations is to look at motor trade guides for valuing second-hand vehicles. We find these persuasive because their valuations are based on nationwide research and likely selling prices. The guides refer to advertised and auction prices to work out what the likely selling price for the same vehicle would be. This takes into account all the specifications of the vehicle as well as any extras and the mileage. If a guide price is significantly higher or lower than the others, we may think it's reasonable to ignore it. This depends on the value of the vehicle.*

*Customers sometimes say the amount they've been paid is unfair because they've seen similar vehicles advertised at higher prices. We wouldn't normally place as much weight on adverts to decide whether a valuation is fair. Differences in mileage or year of registration can significantly affect value, and sometimes the vehicle actually ends up selling for a lower price than advertised. Adverts may be helpful if the complaint involves a classic or rare model. Or if they strongly indicate that the guides could be wrong.*

*I've checked the motor trade guides for the value of Mrs G's van at the time of the incident and they produced the following valuations: CAP £7,325; Glass's £8,063 and Cazana £11,164. However, as this is a van, valuations are exclusive of VAT. So, once VAT is included the actual valuations are as follows CAP £8,790, Glass's £9,675 and Cazana £13,396.*

*Admiral has used the Glass's valuation of £9,675.60 as the basis for its offer. And looking at the three guide prices together our approach would be to say this is fair as normally we might think it's reasonable to ignore any outlying valuation. But having looked at everything and in particular the valuations provided by Mrs G, I don't think the outlying Cazana valuation should be discounted entirely. The reality is that the Cazana valuation is actually closer to the Parkers valuation that Mrs G has provided, and its closer to the valuation provided to Mrs G by the selling garage. But crucially, the Cazana valuation also provides us with details of similar specification vehicles sold around the time of the valuation. And from this information I can see that mileage on this make and model of vehicle has a big impact on price. Similar vehicles sold at higher mileage of 70,000 to 80,000 miles are selling for the same price as the Glass or CAP valuation. But importantly similar specification vehicles with 25,000 to 35,000 miles are selling and have sold for prices closer to the £11,000 mark.*

*So, because of this I don't agree that we can approach this as we usually would. In this case I'm inclined to merge our approaches to get to a fair valuation. We have a number of valuations provided by both parties, and I think we need to take a pragmatic view of all the valuations and not discount any of them. I think the range of valuations provided overall show how difficult it is to pinpoint the exact price for this vehicle. The criteria that drive the price are so varied, and some very specific criteria such as age, mileage, or additional extras play a big part in determining the price. Because of this it makes sense to rely on the guides and use the data provided within them to get to a fair valuation*

*So, with that in mind I think the correct approach would be to include the Cazana valuation and the Parkers valuation and take all four guides into account. The average of the four guides is approximately £10,800.00. And I think, given what I've seen in this file, this would be a fairer pre-accident valuation for this vehicle.*

## *Misrepresentation*

*Admiral has reduced its valuation and only offered to pay a proportional amount of this because it says that Mrs G made a “qualifying misrepresentation” under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).*

*Mrs G says that she had the back windows of her van professionally tinted for her dogs’ comfort. She says she did this after renewal, and she doesn’t agree that this is a modification that needs to be notified to Admiral.*

*However, Admiral disagrees. It says that tinting the back windows is a change which is material to the risk it is insuring. It says the modification would impact visibility both into and out of the vehicle and as is such something it would rate upon. Admiral says it’s a requirement of the policy to notify it of any modifications, as it can’t always offer cover. Admiral has pointed to the section in the policy called “keeping your policy up to date” which it says specifically states that consumers need to disclose modifications (as defined in the policy terms and conditions), before the modification is made, and sets out the consequences of not doing so.*

*Admiral says that a qualifying mis-representation can be made both when the policy is entered into, and during the policy term. Its quoted from CIDRA which says “An insurer has a remedy against a consumer for a misrepresentation made by the consumer before a consumer insurance contract was entered into or varied”*

*So, I’ve looked into whether CIDRA applies if a consumer fails to notify the insurer of a change in their details or the details of the item insured during the policy term.*

*The Law Commission report which led to CIDRA states that:*

*5.62 Under the current law, if a party has stated a material fact that was true at the time, but ceases to be true before the contract has been made, they must correct the statement. A similar principle would apply if someone says something in good faith, and then discovers the statement is wrong. However, once the contract has been made, the duty to disclose ends. There is no general or statutory obligation on the policyholder to inform the insurer of a change of circumstances. If an insurer wants to be notified about changing circumstances, it must add an express term to the policy. Such a term would be subject to review under the Unfair Terms in Consumer Contracts Regulations 1999.*

*5.63 In the consultation paper we proposed to retain the current law. If a consumer becomes aware before a contract has been formed that a statement on a proposal is untrue, the consumer should take reasonable care to correct the mistake. However, this duty ceases after the contract has been entered into. At that point any requirement to provide information must be based on a policy term.*

*The report can be used as an aid to interpretation of CIDRA, if the meaning is unclear. Admiral has said Mrs G was varying the contract when she modified her van. And because of this Admiral thinks CIDRA applies and it can follow the remedies CIDRA sets out it can when settling her claim. But I don’t believe she was. A variation would be something like Mrs G deciding that she wanted cover for driving in the EU or a lower excess. And a variation would need the agreement of both parties involved in the contract. Not just one party making a change unilaterally like what happened here. The addition of tinted windows may have varied the risk which Mrs G posed, but this does not mean that the contract itself was varied. I therefore don’t think there was a qualifying mis-representation under CIDRA. Mrs G wasn’t under any duty under the act to disclose the changes she made to her van, as they were*

made after the policy began and the contract was made.

#### *The policy wording*

*But, as per the policy terms and conditions under the heading "keeping your policy up to date" I can see that Admiral want to know about modifications, and it does say it will calculate any difference in premium, if cover continues.*

*There is no general duty to inform the insurer of changes to the risk while the contract is in force. However, it is clear in the policy that Admiral want to know about changes to the risk. So, while there not be a general duty for Mrs G to disclose any changes of risk, there is a contractual obligation.*

*In the policy Admiral says it wants to know about any modifications to the van. And it does define modifications as; "Any changes to your vehicle's standard specification, including accessories and additional parts; optional extras and aftermarket alterations; trade related changes and parts. These include, but are not restricted to, cosmetic and/or performance changes or changes related to your business or profession". I appreciate Admiral sees the tinting of the back windows as a significant rating factor and a fundamental change in risk. But I don't think it is. And whilst I understand that Admiral's statistics may well show that certain modifications are a greater risk to it, I don't think in this particular instance Mrs G considered that tinting the back windows on this van was a modification that would increase the risk of a claim. Admiral has said it would impact visibility. But this particular van can come with or without a back window, so I don't believe tinting the back window of the model that comes with a back window would increase the risk. Further to this the van comes with parking sensors as standard to assist when parking. So, I can't really see that just because Mrs G tinted the windows, she would suddenly become more likely to make a claim. Because of this, I don't think it was something she needed to tell Admiral about as it wasn't a substantial change to the risk.*

*And so it follows that I don't think it's fair for Admiral to proportionally settle Mrs G's claim or to charge her an additional premium. When Mrs G took out her policy, she was charged a premium which Admiral felt was reflective of the risk it was taking on for her. In other words, the likelihood of it having to pay a claim. I think it's reasonable for Mrs G to have expected the year's premium to remain the same, unless she made a significant or fundamental change to the circumstances that she'd asked Admiral to insure, such as changing her van or her address. In this case it's still Mrs G who's insured and it's still the same van kept at the same address. Admiral asked Mrs G questions and made an assessment of the risk that she'd have an accident, when she took out the policy. As long as all of that information was correct at the time, it's agreed a price to cover her for a year.*

*I do understand Admiral's position, and that it felt the cosmetic change to the van increased the likelihood of it having to pay a claim. But I think there's an acceptance amongst insurers, and their customers, that normal life means that things might change during a policy year, and I don't think it's fair for each and every change to lead to a different premium. If that were the case, insurers could charge extra, or have to offer refunds, when anything about the consumer changed mid-term. Incidents or motoring offences picked up during the term will all affect an insurer's view of risk. But they don't generally affect the premium until renewal. And in addition to having some certainty about how much they'll be charged for a policy year, it's fairer for any changes to apply at renewal because at that point the consumer has free choice to shop around. The consumer doesn't always have that free choice mid-term, because they might incur cancellation charges or lose out in accruing any no claim discount entitlement. So, I think it's fair in this case for the cosmetic change Mrs G made to the van to be treated in the same way.*

## Conclusion

*So, I'm planning on recommending that Admiral increases its pre-accident value on this vehicle in line with what I've set out above £10,800. And as Mrs G didn't make a qualifying mis-representation under CIDRA by tinting the windows mid-term, CIDRA's remedies don't apply here. So, a proportional settlement of the increased market value isn't appropriate. Further to this, even though Admiral do ask to be told about modifications, I wouldn't consider the tinting of the windows such a fundamental change in risk that it would need to be notified mid-term. So, it follows that an additional premium isn't due, and as such Admiral should pay Mrs G the full market value of her van as set out above, less the excess only.*

*I'm also conscious that Mrs G suffered inconvenience because of Admiral's actions. She had to use an overdraft facility to purchase a new car, and I know she also had to hire a car for a period of time. So, I agree with our investigator and I'm recommending that Admiral pay Mrs G £200 for the distress and inconvenience caused by not settling the claim in full.*

Mrs G has confirmed she's received my provisional decision and has nothing further to add.

Admiral hasn't responded.

## 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.

As Admiral hasn't responded, and Mrs G has nothing further to add, I see no reason to depart from my provisional findings.

## Putting things right

Admiral needs to pay Mrs G £10,800, less her excess, for the total loss of her van. 8% simple interest should be added to any monies not already paid, from the date the claim was made. Admiral should also pay Mrs G £200 for the distress and inconvenience caused.

## My final decision

For the reasons set out above, and in my provisional decision, my final decision is to uphold this complaint.

I require Admiral Insurance Company Limited to pay Mrs G £10,800 (less excess) with interest and £200 in compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 6 April 2021.

Derek Dunne

**Ombudsman**