

The complaint

Mr B complains that Admiral Insurance Company Limited avoided his car insurance policy (treated it like it never existed).

What happened

Mr B took out a car insurance policy with Admiral Insurance Company online in August 2020.

Mr B made a claim for windscreen damage and Admiral arranged for Mr B to have the windscreen repaired/replaced by an agent. When Admiral received an invoice from the repairing agent, it couldn't trace Mr B's car from the details provided. Further searches for his car details online led Admiral to discover that Mr B's car had been heavily modified.

Admiral spoke with Mr B in December 2020 and discussed the modifications to his car. Having done so, it said Mr B had answered the question it asked about modifications incorrectly when he applied for the policy in August 2020. Admiral considered this to be a reckless qualifying misrepresentation, which entitled it to avoid his policy. However, Admiral said it wouldn't look to recover the costs of the windscreen claim from Mr B. But as it classified the misrepresentation as reckless and it had met the claim, Admiral didn't refund the premium Mr B had paid so far under the policy.

Mr B had made a Subject Access Request to Admiral and was unhappy with the way Admiral reached its decision. He said when Admiral called him to discuss modifications, it told him it had relied on a report from the windscreen repairing agent – but there was no such report. Mr B provided Admiral with photos which he says show he'd removed the modifications. He said he'd felt tricked by Admiral during the call – but realised after checking dates that his car wasn't modified when he bought the policy in August 2020.

Admiral said its decision was correct – after reviewing the photos and based on Mr B's admission the car had been modified in a phone call in December 2020. But it accepted it had incorrectly told Mr B it had got its information from the windscreen repair agent when this wasn't true. For its error, Admiral paid Mr B £25 compensation.

Mr B brought his complaint to us and our Investigator thought it should be upheld. Mr B explained that in the key call with Admiral, he'd accepted that there were modifications to his car - as Admiral led him to believe it had a report from an expert which they were relying on identifying modifications. But Mr B said he'd since provided Admiral with evidence the modifications had been removed from his car before he bought the policy. So Mr B said he hadn't misrepresented the information. And he was very unhappy with the way Admiral had dealt with the issue – he said the basis of their decision was incorrect. He found in their notes they'd commented on not having enough evidence to avoid the policy.

Mr B wanted Admiral to remove a record of the avoidance so that he didn't have to declare it to future insurers.

Our Investigator thought that Admiral's decision based on what Mr B told it was initially reasonable. But from the information Mr B provided after this, she thought Mr B had shown

the modifications had been removed before he bought the policy.

The Investigator found Mr B's explanation as to why he said his car had been modified in the call was persuasive. Mr B told us he felt Admiral had put him on the spot and that if Admiral had a report from a repairer confirming his car was modified, he accepted their findings. Mr B said he felt tricked and took Admiral's word for it. But after the call, he checked the history of the work he'd done and the dates. He felt Admiral had acted unethically.

The Investigator recommended Admiral pay Mr B £200 compensation for the distress and inconvenience caused by its decision and to remove any record of the avoidance so that Mr B didn't need to declare it to future insurers.

Admiral didn't agree. It says the information Mr B provided doesn't match the dates he says some of the modifications were removed. So it isn't satisfied Mr B has shown he didn't misrepresent the information when he bought the policy. It doesn't agree that Mr B would have been confused during the key call - as he was the one who had carried out the modification removals and would have known the condition of the car better than Admiral did at the time.

Admiral says it has agreed not to pursue Mr B for the costs to replace the windscreen and it hasn't passed Mr B's details to any fraud sharing databases. But Mr B will need to declare to future insurers that he's had a policy avoided by a previous insurer if asked.

I issued a provisional decision on 24 November 2021. I agreed that Admiral had incorrectly told Mr B the basis of its findings in a key call where modifications were discussed. But I didn't think this would have made a difference to the answers Mr B gave in the call. I found the information Mr B gave was detailed as to the work that had been done to the car to date. As Mr B had told Admiral there was no point in an engineer viewing his car because it had been modified, the opportunity for Admiral to arrange an inspection of his car wasn't followed up. And as Mr B confirmed his car had been modified in the call, I didn't think the onus was on Admiral to evidence the modifications, but for Mr B to evidence what he'd said in the call wasn't correct. So I provisionally decided not to uphold Mr B's complaint. I thought Admiral had acted reasonably.

Mr B didn't agree. He provided a letter from a garage which said it viewed his car in July 2020 and all modifications had been removed. In summary Mr B says that Admiral coerced and deceived him into agreeing that his car had modifications in the call in December 2020. He says photos provided show the wheel arches were removed before the policy started. He doesn't believe Admiral should take into account comments on a forum from 2013 – he isn't an expert on modifying cars.

Mr B says he's been advised that the onus is on Admiral to show its decision to avoid his policy was correct – which he doesn't agree it has done.

We forwarded the letter from the garage to Admiral. It says its decision remains unchanged and the letter is written 16 months after the garage viewed the car with no supporting evidence to back up what it says.

So the case has been passed back to me to decide.

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.

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.

Admiral Insurance thinks Mr B failed to take reasonable care not to make a misrepresentation when he answered 'no' to his car having had any modifications when he bought the policy in August 2020.

There isn't a dispute as to how Mr B answered this question, or that the question wasn't clear. Mr B's Policy Schedule highlights the following based on what Mr B told Admiral:

"Modifications - None

(Anything which changes the maker's standard specification or alters its performance including cosmetic changes such as alloy wheels body kits or any non-standard parts. If you have any queries please call us."

And Admiral's policy provides a definition of the term 'Modifications' as:

"Any changes to your car's standard specification, including accessories and additional parts; optional extras and after-market 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."

Mr B says his car wasn't modified when he bought the policy. But Admiral says it was. So I've looked at what information Admiral has relied on to reach its decision to avoid his policy.

Admiral upheld Mr B's complaint that an agent told Mr B it had received a report from the windscreen repairer. This wasn't correct. For the error Admiral paid Mr B £25 compensation.

However, Admiral relied on the information Mr B gave it when it rang him to discuss the modifications. I've listened to this call.

It's clear – and Admiral doesn't dispute this – that the agent incorrectly told Mr B it had images taken by the windscreen repairer which had led to its investigation into whether Mr B's car had modifications. This isn't where the information came from. The windscreen repairer didn't provide Admiral with any images of Mr B's car. The investigation was prompted when Admiral received an invoice from the repairer. Admiral was unable to locate Mr B's car under a standard search. It discovered the car had been previously heavily modified through a general online search. It found that Mr B had commented on online forums about modifying the vehicle shortly before he bought the policy in August 2020. This prompted Admiral to instruct an engineer to arrange an

inspection of Mr B's car.

I understand Mr B is very unhappy about Admiral's error here. I agree that the origin of Admiral's enquiries was not as the agent explained to Mr B. However, having carefully listened to the call, I don't think this made any difference to how Mr B answered the questions asked of him. In response to my provisional decision, Mr B says he was deceived into agreeing his car was modified in this call. But Mr B is the owner of the car and so was the person with the most knowledge about the modifications to it. He provided responses to Admiral's questions about it and I think Mr B was fully engaged in the call. He'd received a call from an engineer the day before asking to arrange an inspection of his car. He had contacted Admiral to ask why - as Admiral failed to inform Mr B of the intended inspection before the engineer called him. Mr B received an explanatory email from Admiral shortly after the engineer had called him.

During the key call with Admiral, Mr B asked questions about the process, about the claim, and provided detailed answers about the history of the car and the work he had done to it since buying it.

Key points from this call are that Mr B's car was previously a 'drag' car used for racing and so had been heavily modified. When Mr B bought it in May 2020, it was a project car and Mr B was in the process of restoring it to its standard specification. Mr B confirmed that the fuel tank was not the original standard tank and Mr B was in the process of changing it. The wheel arches had been changed to allow larger wheels and this too hadn't yet been changed from the modification. Mr B said this was something he intended to put back. He advised that an after-market intercooler had been added and the exhaust would have to be after-market as Mr B won't be able to find a standard exhaust.

In response to my provisional decision, Mr B says the wheel arches were removed to standard before he bought the policy. However, this isn't the only modification identified. Mr B says the aftermarket parts are not modifications, but standard parts. The letter provided by a garage says Mr B's car had all modifications removed before the policy started. But the garage has provided no evidence to support what it says and the letter is written 16 months after it says it inspected the car. So I understand why Admiral says it cannot be relied upon.

In the key call Mr B told Admiral there was little point in the car being inspected by an engineer due to the changes it had undergone and was still undergoing – his car had been modified.

The agent pointed out to Mr B that while he needed to tell it about any modifications when he bought the policy, he also needed to tell it about any intended modifications before they went ahead during the term of the policy. Admiral's policy says under the section "Keeping your policy up to date;"

"You must tell us before about any modifications to your car"

And under its General Conditions, Admiral has a term which says Mr B must keep his car in a roadworthy condition.

At around eight minutes 40 seconds Mr B says, *"to be honest it's going to be another few months before it gets even close to being a normal car"*.

The agent asked Mr B why he didn't get specialist insurance – as he noted that Mr B had owned the car for around six months before he insured it – and due to the amount of modification removal work involved. Mr B said it (Admiral's policy) was cheaper – and he wanted to insure the car against the risk of theft.

Mr B's car had been declared as 'off road' with the DVLA and had no MOT. Mr B said he was going to tell Admiral about the modifications to the car but wanted to wait until it was finished and back on the road. At around 26 minutes Mr B said he was trying to source an original fuel tank.

I agree with Mr B that Admiral's notes show it considered whether it had enough evidence to show his car had been modified when deciding to avoid his policy. But Admiral wasn't satisfied with the information Mr B provided after the key call – and it placed significant weight on the answers Mr B gave in this call when reaching its decision.

As Admiral wasn't able to trace Mr B's car from the registration details, this led to its general online search where it was able to identify Mr B's car. I don't think – from listening to the call - that the incorrect information about having a report from the repairer had an impact on the answers Mr B gave. In other words, I think if Admiral had correctly explained the origin of its discovery, I see no reason why Mr B wouldn't have provided the same answers. I appreciate that Mr B disagrees with me. He says he was influenced by Admiral in the comments he made. But having reconsidered this point, I'm not persuaded that Mr B would have provided different answers to the ones he gave about the modifications to his car. And so I think the compensation Admiral paid Mr B of £25 for this error was fair and reasonable.

I think it's significant that - having given the answers he did - the opportunity for Admiral to arrange an inspection of his car wasn't followed up as Mr B accepted his car was modified in the call. As Mr B confirmed this, I don't think the onus was on Admiral to evidence the modifications, but for Mr B to evidence what he'd said in the call wasn't correct.

After the call, Mr B provided Admiral with screenshots and photos of the car which he says show he had removed all of the modifications before he bought the policy: that the roll bars had been removed, the modified suspension had been replaced with a standard suspension and a modified body kit had been replaced with a standard body kit. And in response to my provisional decision, photos of the wheel arches which he says were changed to standard before he bought the policy.

Admiral said the photos showing the roll bar being removed wasn't clear. So we asked Mr B to provide a clearer photo date, which he did and which we forwarded to Admiral. This is recorded as being emailed by Mr B in May 2020 – so before he bought his policy with Admiral. Admiral didn't respond.

Photos of Mr B's car clearly show it wasn't roadworthy in July 2020. In the key call in December 2020, Mr B said when he bought the car it had no engine in it – he'd bought a replacement engine to match the original one and fitted it about three weeks before. So this is an example of one of the modifications to Mr B's car that wasn't returned to standard by the time he bought the policy in August 2020. Mr B said this was a project car. Admiral's online searches show Mr B had previous experience of modifying cars as he commented on related forums as far back as 2013.

I think the photos Mr B has provided show that some modifications were removed from the car by August 2020. But even if Admiral accepts the roll bars and the wheel arches were removed before August 2020 – I don't think the remaining information provided along with the key call is sufficient evidence to show that Mr B answered the question about modifications to his car with reasonable care. I don't think he has reasonably shown that his car had no modifications when he bought the policy in August 2020 or that he took reasonable care when he answered the question.

The reason an insurer asks if a car has had any modifications is to be able to understand and decide the risk as to the value of the vehicle it is underwriting. The answers a consumer provides gives the insurer a representation of the condition of the vehicle to the insurer. From the information Mr B provided in December 2020, it's clear that the car was on its way to being restored to a standard non modified version – but this isn't the condition it was in when Mr B insured it with Admiral in August 2020. And so the representation of the condition of Mr B's car didn't reflect the risk Admiral believed it was undertaking when it offered Mr B a standard car insurance policy.

I now need to go on to consider whether Mr B's misrepresentation was a qualifying misrepresentation, namely whether it would have made a difference to what Admiral would have done had it known the correct information.

Admiral says if it had known Mr B's car was modified it wouldn't have offered him a policy. Admiral has provided evidence from its underwriters to support its decision. Underwriting information is commercially sensitive and so can't be shared with customers. But we can ask an insurer to share it with us so we can see if an insurer has treated a customer fairly.

This means I'm satisfied Mr B's misrepresentation was a qualifying one.

Admiral has classified the misrepresentation as reckless. Admiral says Mr B's misrepresentation was reckless because he was aware that his car was heavily modified when he took out the policy.

I agree that Mr B's misrepresentation was reckless because I think from the phone call that Mr B knew his car was in the process of ongoing major modifications when he bought the policy.

As I'm satisfied Mr B's misrepresentation should be treated as reckless I've looked at the actions Admiral can take in accordance with CIDRA.

Admiral can decide to retain the premiums where it deems the misrepresentation to be reckless. And even if it could have offered a policy, it can choose to avoid it in these circumstances. In any event, where it has met a claim under the policy, Admiral is entitled to keep the year's premium as it's met its obligations under the policy. In this case, Admiral made the decision not to pursue Mr B for the costs of the replacement windscreen which it was entitled to do in these circumstances.

I understand Mr B will be very disappointed with my decision. But from what I've seen, I'm satisfied Admiral was entitled to avoid Mr B's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, Admiral wasn't obliged to deal with his claim. As Admiral did deal with Mr B's claim, I think it acted reasonably.

And as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Admiral to rely on it to avoid Mr B's policy produces a fair and reasonable outcome in this complaint.

So I'm not asking Admiral to do more than it already has.

My final decision

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 B to accept or

reject my decision before 10 March 2022.

Geraldine Newbold
Ombudsman