

The complaint

Mr S has complained about his motor insurer Admiral Insurance Company Limited as shortly after he had arranged cover with it, it sought to increase his premium.

What happened

In September 2021 Mr S arranged cover online with Admiral, he added his wife as a named driver on the policy. He didn't tell it about an incident the year before with his wife's car, which was settled by another driver's insurer. Whilst it was doing some post-application checks Admiral found details of that claim.

Admiral wrote to Mr S and told him he'd have to pay an increased premium (about a third again of what he'd been originally charged). Mr S was unhappy with that, he felt it was particularly unfair as it was his wife's car that had been affected and it wasn't even dealt with as a claim against her policy as the other driver's insurer dealt with everything. Admiral said Mr S could cancel free of charge if he wanted to. Mr S complained to us.

Our investigator asked Mr S if he had cancelled his policy. Mr S said he hadn't, as he expected he'd have to pay a similar price to any other insurer. Our investigator considered Admiral's pricing criteria. He explained this couldn't be shared with Mr S, but that he was satisfied that it had charged Mr S as it would all other policyholders in a similar position. He noted the option Admiral had given Mr S to cancel. So he felt it had acted fairly in the circumstances.

Mr S said he felt it was unfair and there was nothing that said Admiral could just charge what it wants without sharing the reason for that with him. Mr S said he feels pricing of insurance should be capped as is the case with the utility industries. He said he has a van too – but the price for his van insurance had not gone up. His complaint was passed to me for consideration. I issued a provisional decision. My findings of which were:

"Was Admiral entitled to demand a further payment from Mr S?"

I appreciate that it was frustrating for Mr S to be told Admiral wanted to, and was going to, increase his premium. But Mr S did give Admiral incorrect information when he arranged the policy. He was asked to tell it, in respect of him and any named drivers, of all incidents and claims whether fault or not. And he didn't tell it about the incident involving his wife's car which was settled by the other driver's insurer. I accept, as Admiral seems to have done, given it didn't seek to end the policy, that Mr S had just been mistaken in not giving it this information. He doesn't seem to have acted recklessly or deliberately. But he should have taken more care to answer that question correctly. If he had done then Admiral would have offered him cover at the full price – and he'd have had the chance to decide whether or not to agree to that cover, for that price. So he misled Admiral into offering him the policy it did. As such it's not unreasonable for Admiral, having found out about that, to want to remedy the situation. And Admiral did tell Mr S that he could, as an alternative, cancel the policy. So he wasn't being forced to pay the additional amount.

However, there's a problem with Admiral having done this. The problem for Admiral is that there is legislation which sets out the rights and liabilities for insurers and policyholders when arranging and renewing insurance. That is the Consumer Insurance (Disclosure and Representations) Act 2012 (the Act). And demanding payment or offering the policyholder, in the alternative, to cancel the cover, aren't the remedies allowed for by the Act in this sort of circumstance.

The Act says that where a prospective or renewing policyholder misleads an insurer in the way that Mr S did here, that is a qualifying misrepresentation. And where a qualifying misrepresentation occurs the Act allows the insurer a number of remedies (dependant on the nature of the impact the misrepresentation had on the insurer). Where the misrepresentation caused the insurer to charge a different price than it otherwise would have done, the Act does not allow the insurer to change the price of cover once the misrepresentation is uncovered. However, that doesn't mean the policyholder will get full cover at a lower price. Rather the Act allows the insurer two options as remedy. The insurer can either cancel the cover, or it can opt to tell the policyholder that cover will remain but that any claims made during the policy year will be settled proportionately. That is the insurer will only be liable for the portion of the claim reflected by the proportion of the premium the policyholder has paid. This service views those two remedies as the starting point for resolving this type of situation.

I say 'starting point' because this service encourages insurers to inform policyholders that this is what the Act entitles it to do, with a view to then working out a fair and reasonable way to resolve things. Knowing what the Act entitles the insurer to do means the policyholder can then make an informed decision about what to do. An insurer acting reasonably can give the policyholder the option of continuing the cover whilst paying the additional premium and, thereby, avoiding the risk of the need to settle any claims proportionately. And the insurer can give the policyholder, as an alternative to either paying the further premium or having claims settled proportionately, the option of cancelling the cover themselves, without penalty. That way both parties are free to go their separate ways and the policyholder won't have a cancellation by an insurer on their record.

Here Admiral did give Mr S the option of cancelling his policy, even without the penalty of a cancellation charge. But Admiral's failure here was that it only offered Mr S the option of cancelling the cover as an alternative to its demand for payment of the additional premium. So Admiral didn't seek a remedy for this which is allowed by the Act. And whilst this service, as I said, often encourages insurers to offer the policyholder a chance to pay the outstanding premium or cancel the policy – those options should be given as a part of a fuller package of options, which include the remedies available under the legislation. That way the policyholder can make an informed decision about what they want to do. And it is this package of options that I'm, provisionally, going to direct Admiral to give Mr S now. If my final decision remains that of my provisional, and Mr S accepts it in the timeframe given, that is what it will have to do.

From what I've seen I think Admiral has likely already taken the further premium payment from Mr S. If that is the case and he chooses to cancel, or move ahead with the risk of proportionate payments, then it will have to pay that sum back to him plus interest from the date it took it – which I believe was sometime in September 2021. Admiral will argue that Mr S has had cover since that time, so he should only get a proportionate refund. But Admiral didn't give him all the options in September 2021, so he was unable to make an informed decision about what to do. If he decides now to cancel, or to take the risk of proportionate cover in the event of a claim, I think it's fair to say that is likely the same decision he'd have made then, had he had all the facts. And in that event Admiral would never have taken the money from him. So he should get it back, plus interest.

Was the total price for cover fair?

I know Mr S has concerns about the further premium Admiral feels it would always have charged had he given it the correct information about the incident with his wife's car. But I've seen Admiral's pricing criteria. And, having done so, I'm persuaded that Admiral would always have charged the full sum to Mr S had the incident details been given to it. The pricing criteria shows that when Admiral re-priced his cover, which generated the further premium it asked Mr S to pay, the same price would have been charged to any other customer of Admiral's, who presented the same set of risks as Mr S. And that includes the risk presented by anyone named to drive on the policy. In terms of setting a fair premium, that is all Admiral needed to do.

I can't say why the premium for Mr S's van hasn't been affected. But, in any event, Admiral isn't bound to price its cover in line with what other insurers charge. Each insurer is entitled to decide for itself what risks it does or doesn't want to cover and indeed how it rates that risk, which results in it determining what premium it chooses to charge. And, currently, the regulator, the financial conduct authority (FCA), hasn't seen fit to dictate a pricing cap on the motor insurance industry. Consequently, this service doesn't interfere on matters of fairness about how insurers view risks and what they choose to charge as a result. We do make sure that everyone is treated fairly though, and we do that by making sure an insurer charges everyone that presents with the same risk criteria, in the same way. As I said above, in respect of how Mr S's policy, based on all the correct facts, was priced, Admiral has done that here.

I know Mr S would like to see Admiral's pricing details – that he feels he can't know if it's been fair without seeing them. But I'm not at liberty to share that information. The pricing of policies is highly sensitive commercial data and consequently this service treats such information as confidential. More so as we publish our final decisions too. In respect of confidential information, even when we rely on it in decisions, as I have done here, we don't share it with the other party to the complaint. Nor do we put details of it in the public domain. But, as explained above, I have seen that detail and I think Admiral, in respect of re-pricing Mr S's cover, acted fairly.

In summary

Ultimately the 'increase' occurred for Mr S because he didn't tell Admiral in the first instance about the incident. If he had he'd have seen the full correct price for the policy offered by Admiral whilst searching for cover and had a choice whether or not to accept it. And I'm satisfied the total price for cover has been reached fairly. So it now remains for Mr S to be given the full range of choices he should have been given when Admiral found out about the misrepresentation he had made when arranging the policy."

Admiral said it had nothing further to add. Mr S said he still feels this is unfair as he and his wife have decades of accident free driving behind them – and yet the owner of the car that crashed into his wife's car only suffered a premium increase of £70. He said all he had wanted from this was his £330 back – but it seems insurers can just charge what they want. Mr S concluded that none of the three remedies I offered (in my section, "*putting things right*" below) would really benefit him.

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.

I appreciate that this is a disappointing outcome for Mr S. And that is regrettable. But it is my job to, first, determine if an insurer failed its policyholder. Here, I found that Admiral had failed Mr S – he was treated unfairly when Admiral demanded the £330 from him with no other choice given but to cancel. Then it's my job to put Mr S back into the position he would have been in but for Admiral's failure. And, in this case, that is to offer Mr S one of the three options set out below. Unfortunately for Mr S there's no scenario, in respect of his cover with Admiral, where I can fairly and reasonably make Admiral reimburse him his £330 *and* keep him on cover for the remainder of the year.

But, if Mr S wants his £330 back he can opt for a proportionate claim settlement if a claim arises later in the year. Or choose to cancel the cover and find a policy with another provider. As he's seen from the other driver (who's insurer only increased their price of cover by £70), and I said provisionally, not all insurers view and rate risks in the same way. Whilst Mr S and his wife have never had an accident before, and they didn't cause this accident, the fact of this accident was important to Admiral and did affect the price it would charge Mr S for cover for his car. As I also noted provisionally, if Mr S had declared the accident when arranging cover, it's likely he would never have looked at the policy from Admiral – because the price of it – which would have included the £330 – would simply have not been attractive to him.

Mr S is right, at this time, insurers are free to choose what they want to charge. But it's also true that policyholders can shop around. They aren't bound to go with any particular provider, nor are they bound to stay with an insurer year on year, no matter the renewal price. That is the nature of many business models – if the price one supermarket charges for groceries is unacceptable to you, you can shop elsewhere. But, Admiral, as all insurers must, has to treat all its policyholders fairly and can't charge one, presenting with the same set of risks, differently to another. As I said provisionally, I'm satisfied that, here, anyone presenting with the same set of risks as Mr S, whose wife was a named driver on his policy, would have been charged the same. As such I can't fairly and reasonably make Admiral offer him cover for less.

Putting things right

Bearing in mind what I've said above about what the legislation entitled Admiral to do, I require it to give Mr S the choice of resolving this by picking one of the following options:

- Cancellation – The policy will be cancelled (without penalty), by Mr S. If Mr S picks this option, Admiral must reimburse to Mr S the £330 extra premium it took, plus 8% simple, per year interest* from the date of payment until settlement is made.
- Proportionate liability for claim – Mr S will continue the policy based on the original premium charged, but in the knowledge that in the event of a claim, Admiral will only be liable for any loss (to him or *any other party*) based on the proportion of the premium paid against the full cost of cover. If Mr S picks this option, Admiral must reimburse to Mr S the £330 extra premium it took, plus 8% simple, per year interest* from the date of payment until settlement is made.
- Full cover/full payment – Mr S will move ahead with the policy, until its renewal later this year, on the basis of full cover being in place. If Mr S picks this option, Admiral *will not* have to reimburse to Mr S the £330 extra premium it took.

*If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr S for HMRC purposes.

My final decision

I uphold this complaint. I require Admiral Insurance Company Limited to provide the remedy, as chosen by Mr S, from the list of three set out above at "*putting things right*".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 March 2022.

Fiona Robinson

Ombudsman