

The complaint

Mr G complains Admiral Insurance Company Limited (Admiral) avoided his policy (treated it like it never existed) and declined his claim. Mr G wants his motor insurance policy reinstating and his claim paid.

There are several parties and representatives of Admiral involved throughout the claim but for the purposes of this complaint I'm only going to refer to Admiral.

What happened

Mr G took out a motor insurance policy with Admiral. He paid the annual premium in full.

In September 2019, after Mr G had taken out the policy, he had an accident. He made a claim on his car insurance policy with Admiral.

Whilst making the claim it was noticed that Mr G had not disclosed a motoring offence. He had disclosed one but there were two offences. This was checked with the DVLA. Mr G agreed this was an error on his behalf.

During the call, Admiral told Mr G it would need to refer his claim to its underwriter to investigate. It also wrote to him on 15 October 2019 to inform him of the potential consequences of not disclosing the motoring offence and to give him the opportunity to explain why he had not told them of the missing offence.

Mr G had a second accident on 20 October 2019. His car was badly damaged. He made a second claim on his policy with Admiral. Mr G said he had not received the letter of 15 October 2019.

Mr G said he had forgotten about the undisclosed offence as it had expired on his licence, and he had assumed Admiral had the details because he had provided his driving licence number when obtaining his quote.

Admiral confirmed to him on 29 October 2019 its decision to avoid his policy. Admiral said if it had been aware of this offence it wouldn't have offered him a policy as it did not insure motorists with this specific motoring offence.

As Mr G was not happy with Admiral, he brought the complaint to our service.

Our investigator upheld the complaint in part. He looked into the case and didn't think Admiral had been unfair in avoiding Mr G's policy. But he said Admiral should repay Mr G's premium plus interest at 8% from the date of avoidance in accordance with the law.

Admiral agreed to return the policy premium to Mr G after confirmation he accepted the investigator's view.

As Mr G is unhappy with our investigator's view the complaint has been brought to me for a final decision to be made.

What I have 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.

When reviewing this complaint I've considered the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). It sets out the roles and duties of the consumer and insurer when entering into an insurance contract. CIDRA places the consumer under a duty to take reasonable care not to make a misrepresentation (such as giving untrue or misleading answers). And sets out a number of considerations for deciding whether the consumer failed to take reasonable care.

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 must 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 that a qualifying misrepresentation can be careless, reckless, or deliberate. If found to be careless, the insurer can take action depending on what it would have done had it not been for the misrepresentation/non- disclosure.

Admiral thinks Mr G failed to take reasonable care not to make a misrepresentation when he failed to disclose all his motoring convictions on the application for his motor policy.

Policy

I've looked into the detail in Mr G's policy and the questions he was asked.

In the General Conditions section of Mr G's car insurance guide it says;

"You will be provided with the cover set out in this policy if:

- you or anyone else claiming cover under the policy has kept to all the terms and conditions of the policy*
- the information confirmed on your Motor Proposal Confirmation or when registering a claim is true and complete"*

I checked the Motor Proposal Confirmation and I saw the section in which motoring offences are detailed. Here it clearly says, "Motoring offence within the last 5 years". In Mr G's proposals there was only one offence listed and not both. Therefore, it was not complete.

In the same document it says;

"Declaration: It is an offence under the Road Traffic Act to make a false statement or withhold any information to gain the issue of a Motor Insurance Certificate. Any incorrect information could lead to us declaring your policy void and/or declining any claim.

We use all the information contained on this form to assess the risk we are undertaking. You should disclose this information accurately and you must contact us if any information is incorrect or has changed. A copy of this Motor Proposal Confirmation has been supplied for you to keep. If you give us any added information in writing you should make and keep a copy."

*I have considered the documents that were sent to Mr G at the start of the policy and having done so I think that Admiral clearly defined what was required from the policyholder. And it was clear that Mr G was responsible for providing Admiral with the details of **all** his motoring offences in the past five years.*

Mr G received two versions of this proposal documentation. The first on 29 July 2019 when the policy first started and again on 1 August 2019 when he updated the number plate to his private registration. Therefore he had two opportunities to notice the missing motoring offence.

Mr G said that as he had provided his driving licence details when obtaining his quote all his motoring offences would have been highlighted to Admiral. However, I cannot accept that it was reasonable for him not to check his documents or notice that he had a motoring offence missing from the proposals sent to him. As a consequence I consider that Mr G has made a material misrepresentation to Admiral of his circumstances.

I have considered the background information and reasons Mr G was issued the undisclosed motoring offence. I understand that he had some personal family issues to deal with during a similar time period, so I can appreciate this motoring offence will not have been the most important thing on his mind.

However, as the policy holder it is Mr G's responsibility to check all of his insurance policy documents. As I have said above, I believe the documents sent to him by Admiral were clear about disclosing motoring offences, what to do if they were incorrect on the policy documents and the potential consequences of his policy being avoided if they were not disclosed.

Admiral has provided evidence of its underwriting guidance that shows it does not offer motor insurance cover to motorists with Mr G's conviction. I have seen this guidance and although I can't disclose this as its commercially sensitive, I can assure Mr G it supports Admiral's position that it wouldn't have offered him cover. This means I am satisfied Mr G's misrepresentation was a qualifying one.

Admiral thinks Mr G failed to take reasonable care, but it hasn't refunded his premium and so in effect has treated the misrepresentation as deliberate or reckless. Where an insurer reaches this view, it is a requirement that the insurer demonstrates the evidence in support of this.

I haven't seen evidence that would indicate Mr G deliberately or recklessly failed to provide details of the offence. I don't believe that Mr G's misrepresentation was deliberate or reckless and I'm satisfied it should be treated as careless. I've looked at the actions Admiral can take in accordance with CIDRA. Admiral can avoid the policy back to its start date. This means his policy can be treated as though it never existed. However, Admiral is required by CIDRA to reimburse Mr G for his policy premiums for the avoided period of his policy.

Claims

The issue with undisclosed offences was identified when Mr G made his first claim on his insurance for damage caused by a third-party.

Mr G said when the undisclosed motoring offence was discovered at the point he made the claim for this accident in September 2019, he was informed that he was still OK to use the car and was insured. He said on the date of the second accident in October 2019 as Admiral were aware of both his motoring offences it should accept this claim

I have listened to the calls between Mr G and Admiral on 20 September when he made the first claim and I did not find that Admiral had told Mr G he was still OK to drive. The question was not asked by Mr G and Admiral did not bring this up during the call.

The Admiral call handler said she had now recorded the previously undisclosed offence and it was now all up to date. She also said that his claim will be passed to its underwriters and they would let him know if there were any changes at all.

Mr G said he had no reason to doubt his insurance was on hold or could be cancelled. He said he felt the Admiral call handler was actually very reassuring that everything with his claim was fine. He said if he had been informed that his insurance was on hold as he felt he should have been, then he would not have used the car.

Mr G said after the call on 20 September 2019 he spent time obtaining quotes for repairs and no one told him there could be an issue with his insurance claim. He said this also led him to believe there was no issue with his claim

I have looked at the correspondence that was all sent by email to Mr G on the 20 September 2019 after he made the claim call to Admiral. There were three in total. One letter regarding approved repairs, one letter introducing Admiral Law, and one letter stating his claim had been passed to Admiral's underwriting department and that it may not be able to deal with his claim. They were all sent on the same day.

On 15 October 2019, before the date of Mr G's second accident, further correspondence was sent to Mr G in which Admiral confirm again his claim has been referred to an underwriter and this includes reference to its option to "void an insurance policy where there has been a non-disclosure/misrepresentation".

This letter also included the following paragraph "This could mean that any claim against the policy would be refused and the policy cancelled in its entirety. I refer you to the section of your policy booklet entitled 'Keeping your policy up to date' which outlines the importance of making sure your policy is accurate and correct."

Mr G said he was not sure if he received the email sent 15 October 2019. As it was sent to the same address as all other correspondence, I think Admiral made adequate written attempts to inform him there could be an issue with his cover. He had also previously been informed of the potential issue with his cover, in writing, on 20 September 2019.

After considering the letters and phone calls together, although Admiral have not specifically said for Mr G not to drive his car, I think it was clear there may be an issue with the cover in place.

When Mr G had a second accident and he made a claim on his car insurance on 20 October 2019 he was told by the call handler he could not continue with the claim until the underwriting team had responded regarding the undisclosed motoring offence.

On 29 October 2019 Admiral confirmed to Mr G it had decided to exercise its option to declare all cover for him and his car, null and void from the policy start date. And confirmed as a result of this, it was unable to deal with his claims.

Admiral did not refund the cost of the policy to Mr G. It did not offer any explanation why it did not. As I'm satisfied Mr G's misrepresentation should be treated as careless, under the terms of CIDRA this means it has to refund the cost of the policy to him. I intend to require Admiral to return the premium paid with interest added.

Admiral awarded Mr G £50 for the frustration and upset caused during the call on 20 September 2019. It accepted its call handler should have placed him on notice that his cover may be affected.

I believe the compensation of £50 paid to Mr G by Admiral for frustration and upset its actions caused by not being clear during the initial claim call was not adequate. I intend to require Admiral to increase its offer to £150.

I understand Mr G will be disappointed with my decision, but I think Admiral have acted in accordance with its underwriting criteria by avoiding his policy, due to his failure to disclose his motoring offences in full.

Therefore, I intend to partially uphold Mr G's complaint.

Responses to my provisional decision

Admiral responded to say

- Mr G did not provide his driving licence details at quotation as he said he did. The policy was accepted online based purely on the customer's self declaration. It said had driving licence numbers been provided during the quotation he would have been redirected to Admiral's call centre due to the mismatch between what the customer had declared and DVLA records.
- It did not have the original quote log but new evidence was submitted from Admiral's online system that showed the policy created from the quote did not include a driving licence number. Admiral said this showed Mr G did not provide his driving licence number when obtaining his quote.
- As it now appears Mr G provided misleading information about originally providing his driving licence number to support his dispute, it feels this strongly adds weight to its assessment of the misrepresentation being reckless. It said this indicates Mr G did not care about the accuracy of the information he provided. Admiral confirmed it assesses this misrepresentation as being reckless.

Mr G responded to say

- When he reported the first damage to his car, why did Admiral's advisor not tell him his insurance was on hold and not to use his vehicle. And why did it take Admiral so long to void his insurance.
- Why did Admiral not check his driving licence that he had submitted when requesting the on line quote. Why have Admiral not provided proof that his licence number was not input on its online system.
- Why did Admiral not pay back his premium immediately if they recognised this as a mistake.
- He realised he made a mistake but feels Admiral have done the same. He believes Admiral are "*equally to blame in misrepresentation*" and that a fair resolution would be for Admiral to settle half of the loss (£10,000).

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.

In response to Admiral's comments

- I accept that the new evidence provided shows that Mr G's policy was offered without Admiral using his driving licence number. However I cannot say with 100% certainty this proves he did not provide it during his on line application, because Admiral have not been able to provide the original quote log.

In response to Mr G's comments

- In my provisional decision I have already responded that Mr G was notified by Admiral that there could be an issue with his cover and it may not be able to deal with his claim. Mr G was given ten days from 15 October 2019 to give his reasons for non disclosure of the offence and for them to be considered. The final decision to avoid his insurance was made by Admiral on 29 October 2019. I think this timescale is reasonable.
- Admiral have now submitted new evidence that it says show Mr G did not submit his driving licence when he made his online application.
- The premium was not paid back immediately as Admiral believe it is not liable to pay it back. Although it did not confirm its reason of reckless misrepresentation until now.
- Mr G is responsible for the accuracy of the information supplied to Admiral and he was given enough opportunity to notice his mistake. Admiral cannot be held responsible for customer mistakes.

In this case we still have the situation that Mr G said he submitted his driving licence number and Admiral say he did not. There is no conclusive proof if he did or did not.

However there is no doubt there is evidence of a series of mistakes made by Mr G. Including inaccuracies when completing his application and not checking his policy paperwork after the policy started.

I realise this matter has caused Mr G a great deal of distress and a significant financial loss. But based on the evidence and after considering everything again, I think that there is fair and reasonable argument to say the misrepresentation made by Mr G should be considered careless. I have reached this conclusion in part as it is Admiral's responsibility to show it was reckless and I don't think it has done that.

As I'm satisfied Mr G's misrepresentation should be treated as careless, under the terms of CIDRA this means Admiral has to refund the cost of the policy to him. I require Admiral to return the premium paid with interest added.

I believe the compensation of £50 paid to Mr G by Admiral for frustration and upset its actions caused by not being clear during the initial claim call was not adequate for the impact of its poor service on Mr G. I require Admiral to increase its offer to £150.

Therefore I partially uphold Mr G's complaint.

My final decision

For the reasons I have given I uphold this complaint in part.

I require Admiral Insurance Company Limited to pay the cost of the avoided policy premiums to Mr G within 28 days of the date on which we tell it Mr G accepts my final decision. It must also pay interest on the cost of the policy from the date Mr G paid for the policy to the date of payment at 8% a year simple.

I require Admiral Insurance Company Limited to pay Mr G compensation to the total of £150, less the £50 already paid. It must pay within 28 days of the date on which we tell it Mr G accepts my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 May 2022.

Sally-Ann Harding
Ombudsman