

The complaint

Mr H complained that Admiral Insurance Company Limited declined his motor insurance policy claim.

What happened

Mr H was unhappy when his car was stolen and Admiral declined his claim for its theft. Admiral said he'd misrepresented to them because he hadn't told them that his named driver Ms A had a conviction for driving without insurance (DWI) and that the other named driver Mrs H had a speeding conviction. Admiral said that if they had known about Ms A's DWI conviction, they wouldn't have insured him at all.

They said he'd made a reckless or deliberate qualifying misrepresentation about Ms A's conviction. So they avoided his policy, meaning they treated it as if it didn't exist, from its renewal date. They also retained the premiums he'd paid.

Mr H said Admiral already knew that Ms A had been stopped by the police for driving without insurance, so he didn't think he had to disclose it. Admiral at first denied knowing that Ms A had been stopped for DWI, but later admitted that they had known, and offered Mr H £150 in compensation for that.

Mr H said that Admiral didn't compensate him enough for the distress and inconvenience he'd experienced as result of them declining his theft claim and avoiding his policy. He said as follows. He couldn't get a policy in his own name, only as a named driver, and not for the same size car. His premiums were much higher, and he'd incurred costs when he was without a car. He worked in the finance industry and Admiral had damaged his reputation. He wanted Admiral to clear all insurance databases to show that his insurance had never been cancelled or avoided and he'd done nothing wrong. He brought his complaint to us via his solicitors and wanted Admiral to reimburse his solicitors' fees of about £8,000.

The investigator recommended that Mr H's complaint be upheld. She considered that Admiral should honour Mr H's theft claim, with a proportionate settlement due to Mrs H's speeding fine. She correctly explained that we don't award compensation for legal fees because we don't think it's necessary for consumers to use a solicitor and it was Mr H's choice to do that. She thought that Admiral should pay him compensation for his loss of use of his car and compensate him £2,500 for his distress and inconvenience. Admiral didn't agree with the level of compensation and so I was asked to decide.

I issued my provisional decision on 7 September 2023.

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 my provisional decision I said as follows :

“ Qualifying misrepresentation

As Admiral said Mr H had made a qualifying misrepresentation about Ms A's conviction, I've looked at the relevant law, which is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This law says a consumer needs to take reasonable care not to make a misrepresentation when taking out or renewing an insurance policy. It says if a consumer doesn't do this, the insurer can take certain actions as long as the misrepresentation is a qualifying one.

I've looked into whether I think Mr H took reasonable care not to make a misrepresentation about Ms A's conviction, whether the misrepresentation was qualifying and whether the action Admiral took was in line with CIDRA.

Reasonable care

CIDRA says a consumer needs to take reasonable care not to make a misrepresentation to an insurer. Admiral said Mr H didn't take that reasonable care when he renewed his policy in 2020. They said their agent asked if he was happy with the information on his policy being accurate, and he agreed. And he didn't then tell them that the policy documents he sent them were inaccurate, because they didn't include the convictions for Ms A and Mrs H. Mr H accepted that he hadn't disclosed Mrs H's speeding conviction. He said this was due to miscommunication between himself and Mrs H.

Mr H said he didn't think he had to disclose Ms A's conviction because he thought Admiral already knew about it. He said as follows. Ms A was stopped by the police for DWI in October 2019 because Mr H said that unknown to him, Admiral had failed to renew his policy. Mr H said this was the first he heard of it. Mr H immediately took out a new policy with Admiral by the roadside so that Ms A could carry on driving because the police would not let her drive otherwise. Ms A was later charged and convicted for DWI. Admiral said Mr H didn't disclose that conviction on the policy's renewal.

Mr H claimed that it was wrong of Admiral not to automatically renew his policy in 2019 and said that if Admiral had automatically renewed it, Ms A wouldn't have had the conviction at all. He said he didn't receive Admiral's letters offering to renew his policy on payment of the premium and warning him that it would expire if he didn't. This was because he was not in the UK in August 2019 and when he did return in September, those letters weren't waiting for him either.

Mr H explained that he is often overseas and therefore organised his insurance with Admiral so that it would always auto renew, and he'd receive emails about his policy, because he may not be at his UK residence to receive letters. His contact preference was email and Admiral always contacted him that way except in August 2019. Mr H said that it was Admiral's fault that the policy was cancelled because Admiral didn't contact him by email as he had always requested and as Admiral had done since 2012 when he first insured with them. He said he'd deliberately set it up to auto renew so that he wouldn't have to remember to renew it.

Mr H's policy information going back to about 2012 does show that Admiral auto renewed his policy every year. And Admiral's system notes show Mr H's communication preference as emails. So it seems that Admiral had removed the auto renewal on his policy and also changed their method of contacting him from email to letter, both without telling him. Admiral couldn't provide any persuasive evidence that Mr H had asked them to do that, or that they had told him about the change. So I think that this was unfair and that their change from Mr H's long-term preference for email communication, to letters in August/September 2019, was an error which led to the expiry of the policy with its later repercussions.

Although Admiral at first denied having known about Ms A's conviction, they later agreed that they had known about Ms A being stopped by the police for DWI. Admiral had discovered some information from their files on Mr H's previous policy that had expired in September 2019. This showed that the Motor Insurers' Database asked Admiral on 28 October 2019 if Ms A had been insured with them then because she had been stopped by the police. Admiral confirmed that she was no longer insured with them because the policy had expired. So, Admiral knew that Ms A had been stopped by the police for driving without insurance, and they agreed that they should have probed Mr H more when he renewed the policy in 2020. So, they upheld his complaint about that and offered him £150 in compensation.

Mr H thought that because Admiral already knew that Ms A had been stopped by the police, when Mr H renewed his policy it was reasonable for him to assume that he didn't need to disclose Ms A's conviction to them – because they already knew about it. However, Admiral only knew that Ms A had been stopped, not that she had been convicted. If Admiral had probed Mr H further about the matter in the renewal phone call, Mr H may have disclosed the DWI conviction then. But I don't think that Admiral's failure to probe on that one occasion overrides Mr H's duty to take reasonable care not to make a misrepresentation. That duty continued to apply to Mr H, and he should have disclosed the conviction to Admiral when the policy renewed.

Admiral have shown us that they sent Mr H his policy documents in 2019, 2020 and 2021 which noted that Ms A had no convictions. Those documents said that Mr H should check the documents carefully and contact Admiral if anything was incorrect.

Mr H had a duty to check these and to tell Admiral that information within them was incorrect. Because he didn't do that, I think Mr H did fail to take reasonable care not to make a misrepresentation about Ms A's conviction, but I'm satisfied that misrepresentation was careless rather than deliberate or reckless.

This was because it was made against the background that Admiral did know about Ms A's driving without insurance, and Mr H assumed that Admiral knew. So it's not as if Mr H didn't think about the question or its importance, nor did Mr H give a deliberately incorrect answer. For these reasons I think it's fair the misrepresentation is treated as a careless one.

Admiral has shown evidence that they don't insure anyone with an IN10 conviction (a conviction for driving without insurance). They say this means they can avoid Mr H's policy.

However the conviction belonged not to Mr H but to Ms A who was a named driver. So, Mr H's misrepresentation entitled Admiral to not insure Ms A, and remove her from cover, but it didn't entitle Admiral to avoid the policy because it would have insured Mr H, albeit on different terms (without Ms A as a named driver). And so it follows that I think that Admiral's decision to decline Mr H's claim on the basis that it avoided the policy because of Ms A's conviction was unfair and not in line with the remedies for a careless qualifying misrepresentation set out in CIDRA.

In relation to Mrs H's speeding conviction, Admiral has not shown us that if Mr H had disclosed it, it would have made a difference to the premium, so there is no qualifying misrepresentation under CIDRA. So, it's not fair Admiral take any action in relation to this.

And so, to put things right I think that Admiral should reinstate Mr H's policy without Ms A as a named driver on it and assess his theft claim in line with it. Should this mean the claim should be paid, they should add interest to that settlement from the date they should reasonably have settled his claim.

Admiral should also compensate Mr H for his loss of use of his car for the period until he bought the new car. Mr H said he was waiting for Admiral to pay his theft claim so he could buy a new car. But it was very inconvenient for him and his family to be without his car for so long, because he has four children and had to pay for taxis to transport them to school and elsewhere. So he finally had to buy one from his own funds. I think Admiral should compensate him £10 a day from 30 May 2021 when the claim should reasonably have been settled, to 15 September, when he bought a new car.

And because of Admiral's avoidance, Mr H wasn't able to insure his new car in his name but could only be a named driver, and wasn't able to insure a car of the same size or engine type as his stolen car. He also had to pay more in premiums. Admiral should therefore compensate Mr H for any extra premium amount that he has paid for insurance with a new insurer.

Mr H also felt that Admiral had damaged his good reputation because he works in the finance industry. He wanted Admiral to clear his name and remove any record of cancellation and avoidance from the insurance database. He also wanted Admiral to compensate him for his solicitor fees of about £8,000 in bringing the complaint to us. But as the investigator explained, this Service does not award compensation for legal fees accrued because this is a free service and parties do not require representation to bring a complaint, though they may choose to do so.

Because Admiral can't show why they changed that agreed process for contacting him, I don't think it was fair that they failed to auto-renew his policy. I think that they should therefore remove all insurance database references to cancellation and avoidance of his policy and declination of his claim.

I go on to consider compensation for distress and inconvenience. This is payment to reflect the impact that Admiral's mistake had on Mr H. Admiral offered £150 but the investigator recommended an award of £2,500. She thought that was the right level of compensation to reflect the impact the declination of his claim and avoiding of his policy for misrepresentation had on Mr H as he had to deal with the matter for about a year and a half.

Mr H works in the finance industry and is concerned about his reputation. He feels that he has been blacklisted by insurers and he has been unable to insure himself for the sort of car he had before. I can see that must have been frustrating for him. However he was still able to obtain a new car and insurance for it and in my view the adverse consequences for Mr H arising from Admiral's actions in cancelling his policy are resolved by the above redress I propose to award.

Mr H has confirmed that he has not had to disclose anything about the issue to his employer. So, he was not impacted at work, although I appreciate his concern that he may have been. This is as I would expect, because the DWI conviction wasn't his, but Ms A's. So, it did not impact Mr H's reputation at work or in his industry. Ms A is not party to the complaint and as the investigator explained, we don't have power to award her compensation as a result. But Ms A worked for Mr H and would have been relying on him to properly insure the car she was driving. I appreciate that it would have been embarrassing for Mr H that his worker received a conviction due to problems with his insurance. Nevertheless, in my view the distress and inconvenience that Mr H experienced is more adequately reflected by an award of £1,000 and that is more in line with our guidelines.

My provisional decision

For the reasons given above, my provisional decision is that I uphold the complaint.

And I require Admiral Insurance Company Limited to do the following:

- Reinstatement Mr H's policy on the revised terms of not having Ms A as a named driver and assess his claim in line with those terms.
- Should the claim be paid, Admiral should add 8% simple interest to the claim settlement figure from 30 May 2021 (four weeks from when Mr H's vehicle was stolen, and the date the claim should have been reasonably settled) until the date Admiral settles this.
- Pay Mr H £10/day for his loss of use of the vehicle from 30 May 2021 until when he bought a new car on 15 September 2021
- Remove any records in relation to cancellation and avoidance of Mr H's policies and declination of his claim from all insurance databases (internally and externally).
- Give Mr H a letter explaining that one policy was cancelled or not renewed, and the other avoided, both in error, which he may give to future insurers.
- Compensate Mr H for any extra premium amount that he has paid for insurance with the new insurer following Admiral avoiding his policy.
- Pay Mr H £1,000 in compensation for the distress and inconvenience their actions have caused him."

Mr H accepted my provisional decision. Admiral said they accepted it but that they could not reinstate Mr H's policy as it was from 2021. I explained that what I was requiring was for Admiral to effectively reinstate Mr H's policy; that's to say Admiral should act as if they had not avoided Mrs H's policy, act as if the policy was still in force without having Ms A as a named driver, and deal with Mr H's claim as if that policy was still in force. Admiral accepted that. So my final decision follows my provisional decision.

My final decision

For the reasons given above, my final decision is that I uphold the complaint. And I require Admiral Insurance Company Limited to do the following:

- Effectively reinstate Mr H's policy on the revised terms of not having Ms A as a named driver and assess his claim in line with those terms
- Should the claim be paid, Admiral should add 8% simple interest to the claim settlement figure from 30 May 2021 (four weeks from when Mr H's vehicle was stolen, and the date the claim should have been reasonably settled) until the date Admiral settles this
- Pay Mr H £10/day for his loss of use of the vehicle from 30 May 2021 until when he bought a new car on 15 September 2021
- Remove any records in relation to cancellation and avoidance of Mr H's policies and declination of his claim from all insurance databases (internally and externally).
- Give Mr H a letter explaining that one policy was cancelled or not renewed, and the other avoided, both in error, which he may give to future insurers.
- Compensate Mr H for any extra premium amount that he has paid for insurance with the new insurer following Admiral avoiding his policy.
- Pay Mr H £1,000 in compensation for the distress and inconvenience their actions have caused him.

Admiral must pay the compensation within 28 days of the date on which we tell them Mr H accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If Admiral consider that they are required by HM Revenue & Customs to withhold income tax from that interest, they should tell Mr H how much they have taken off, and give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 December 2023.

A handwritten signature in blue ink that reads "R. Scott". The signature is written in a cursive, flowing style.

Rosslyn Scott
Ombudsman