

The complaint

Mr D complains that Admiral Insurance Company Limited unfairly avoided his motor insurance policy (treated it like it never existed) and refused to settle his claim.

What happened

Mr D took out a motor insurance policy with Admiral through an on-line price comparison website.

After a third-party vehicle collided with him whilst he was stationary, he notified Admiral.

Admiral declined to settle the claim and avoided his policy.

Admiral said Mr D answered the question it asked about modifications to his van incorrectly. And it considered this to be a reckless qualifying misrepresentation, which entitled it to avoid his policy, decline his claim because of this and keep the premiums he'd already paid.

Mr D brought his complaint to us, and our investigator thought it should be upheld. They didn't feel it was reasonable to say Mr D misrepresented himself in this case. They said Mr D declared his job as a farrier and it seemed reasonable to assume the vehicle would be adapted to fit his needs.

Admiral doesn't agree with the investigator and has asked for an ombudsman's decision. It said Mr D insured the van as a standard van when he was aware it wasn't. It said a standard van does not come with a working forge fitted in the back to enable someone to use the van itself as a tool of the trade. It said this was reckless. It said had the conversion been declared it would not have offered a policy.

My provisional decision

The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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 thinks Mr D failed to take reasonable care not to make a misrepresentation when he failed to tell it about the job specific modifications to his vehicle when taking out his policy.

When Mr D took out his policy this was completed by using an on-line comparison website. Although Admiral were unable to supply the questions asked by the on-line comparison website, it was confirmed the questions had not changed since 2019. I checked the quotation questions, after identifying the van to be insured, there is a question that says; "Has the van been modified in any way? This includes fitting it with any optional extras such as changes to the bodywork, engine or wheels."

I saw Mr D said he may have used the car insurance questions on the website rather than the van questions, so may not have seen this question. However I think this is unlikely as the on-line comparison website user is transferred to the van insurance application questions when the details of the vehicle are found to be a van.

Ultimately it is Mr D's responsibility to check the details of his application and the insurance policy offered. In this case he said his van was not modified. And I saw his policy documentation says there were no modifications to the van.

I don't think Mr D took reasonable care to accurately complete his application for a motor insurance policy or to check the details of the policy offered .

Admiral has provided evidence by way of its underwriting criteria which shows it would not offer cover to a van that had been modified for a farrier workshop either a full or a part conversion.

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

Admiral said Mr D's misrepresentation was reckless because the information about the specification and body type was known to him and he had more than one occasion to make sure Admiral held the correct information.

I don't agree Mr D's misrepresentation was reckless, I think he was careless. He said he thought as the van was marketed as a farrier vehicle and it was exactly as it was when he bought it from the main dealer that it was not modified. He had always disclosed his occupation as a farrier, that he used the van in the course of his work and that he carried hazardous materials. As he had disclosed this he wrongly assumed he was covered by his policy. I do not think Mr D misled Admiral for financial gain or to gain a policy it would not have offered had it known the correct information about his van.

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

As Admiral have shown evidence it would not have offered cover if it had known the van was a farrier conversion, it can avoid the policy and treat it as if it never existed and not deal with the claim. And it should return any unused premiums.

In this case as Admiral treated the misrepresentation as reckless, it avoided Mr D's policy, declined his claim because of this and kept the premiums he'd already paid.

I'm satisfied Admiral was entitled to avoid Mr D's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, Admiral does not have to deal with his claim following the incident with his van. And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Admiral to rely on it to avoid Mr D's policy produces the fair and reasonable outcome in this complaint.

In light of all this I think the fair and reasonable outcome to the complaint is that the avoidance of the policy is amended and recorded as careless misrepresentation. As Admiral declared his policy null and void from the inception date it should return Mr D's policy premiums from the start of the policy term in March 2021.

Responses to my provisional decision

Mr D responded and said

1. As the questions asked during his application for a motor insurance policy were asked on the on-line price comparison website and not on the Admiral website, it could not draw its conclusions based on the questions asked on its own website. And there was no option to select a farrier workshop conversion on the on-line price comparison website.
2. He said the forge was not part of the modification to the van but a tool he used for his job. He believed the only mistake he made was not realising that the fitting of the back and shelving was considered as a modification and not an optional extra. He said the modifications made were for safety reasons. He could not see how this meant he had acted either carelessly or recklessly.
3. He thought Admiral should not have offered him van insurance cover with or without modifications when it was aware he was a farrier and used his vehicle for work.
4. As Admiral said it should have voided his policy from inception does that mean it should refund all his premiums from previous years.
5. Will the record now be removed from the claims and underwriting exchange (CUE) as he has been caused a significant financial loss.

Admiral responded to say it had no further comments to provide and accepted the proposed outcome.

When asked, Admiral confirmed it declared Mr D's policy null and void from the initial inception in 2019. It provided the detail of the policy terms and amounts of the premium paid each year. Total for all terms was £1,156.24.

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 Mr D's comments

1. In my provisional response I have referred to the questions asked on the on-line price comparison website and I have made my decision based on these, and not the questions on Admiral's website.
2. I can accept the forge was not part of the modification, but Mr D said he bought the van as a farrier vehicle and accepted he did not declare any modifications when asked by the on-line price comparison website. Due to this, no further questions were asked about modifications. As previously stated Admiral showed evidence it would not offer cover to a van that had been modified for a farrier workshop either a full or a part conversion.
3. Admiral, as is any insurer, is entitled to take its own view on how to underwrite the policies it offers. It will decide what factors to take into account. We are not the industry regulator and cannot tell it how it must assess risk and who it can and cannot insure.
4. Admiral have clarified it had declared the policy null and void from the initial inception in 2019. This means a refund is due for all three years premiums as none of them exist.
5. Admiral must amend any internal or external records to record the misrepresentation as careless rather than deliberate.

Based on the evidence I've reviewed, I have updated my provisional decision in relation to the refund of premiums required. Admiral are aware of this.

I uphold Mr D's complaint and require Admiral to record the avoidance of Mr D's policy as careless misrepresentation on both internal and external records and return the policy premiums from initial inception in 2019.

My final decision

For the reasons set out above, I uphold Mr D's complaint.

I require Admiral Insurance Company Limited to record the avoidance of Mr D's policy as careless misrepresentation on both internal and external records and return the policy premiums from the start of the policy in February 2019. This is a total of £1,156.24.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 17 November 2023.

Sally-Ann Harding
Ombudsman