

## **The complaint**

Mr K complains that Admiral Insurance (Gibraltar) avoided his motor insurance policy (treated it like it never existed), refused to pay his claim and has kept the policy premium.

## **What happened**

Mr K took out a motor insurance policy with Admiral which was automatically renewed in August 2022. When he had a car accident in December 2022, he tried to make a claim. Initially he says he was told his car would be written off and the MS90 conviction he had wouldn't affect his claim.

Admiral said he'd failed to tell it that matters had changed on renewal. This is because the answers he'd previously given about not having any motoring offences added to his licence in the last 5 years was incorrect by the time of the policy's renewal - he'd had a MS90 conviction in September 2021. Admiral considered this to be a careless qualifying misrepresentation, which entitled it to avoid his policy, decline his claim because of this and keep the premiums he'd already paid towards the third party's claim.

Mr K complained about this to Admiral as well as a number of service issues. Admiral didn't change its decision to avoid his policy. However, it agreed there had been some service failings including Mr K being told if the conviction was nothing major, this shouldn't affect his claim, long hold times on calls and getting calls from its agent about his car after he'd been told the policy had been avoided. As a result, it apologised for the times its service fell below the standard he was entitled to expect and offered compensation of £150 to put things right including £50 for how it dealt with his complaint.

Mr K brought his complaint to this service for an independent review. The Investigator was satisfied there had been a careless qualifying misrepresentation. As a result, they thought Admiral was entitled to avoid Mr K's policy, decline his claim and retain the premium he'd paid to it on account of the settlement of the third party's claim. In relation to the service issues, the Investigator considered the amount Admiral had offered was a fair and reasonable way for it to resolve Mr K's complaint regarding the service issues he'd raised with it. And he explained, as Admiral had avoided the policy, it wasn't required to cover any of the costs incurred by Mr K relating to the claim.

Mr K doesn't agree with the Investigator and has asked for an Ombudsman's decision. Mr K says Admiral auto renewed his policy - sending it to his junk email folder with no opportunity for him to update his details about any claims or points. Having checked online, he says Admiral would have offered cover to someone with a MS90 conviction. He says he was lied to and given false information by Admiral and its agents which caused him to incur costs. This is because he was assured his claim would be paid notwithstanding the MS90 conviction and even given a time frame for this. So, he doesn't agree the compensation is sufficient for the mistakes made. He says he's been treated unfairly and unjustly and this has impacted him from both a financial and mental wellbeing perspective.

## **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 says Mr K failed to take reasonable care not to make a misrepresentation when he didn't tell it about the MS90 conviction he had from September 2021 when his policy renewed in August 2022. Mr K says he didn't realise it'd been renewed as the email went to his junk mail folder. However, when Mr K took out his policy, he was asked a number of questions, including about any convictions he had in the 5 years prior. And Admiral used this information, along with the responses to its other questions, to evaluate the risk of the policy. When the policy renewed, the information Mr K had provided previously was detailed in the policy documentation he was sent. And I'm satisfied the renewal information he received was clear - it was Mr K's responsibility to ensure the details set out in it were accurate. Even if the renewal invitation and subsequent policy information emails were directed to Mr K's junk email folder, I don't consider this is something Admiral is responsible for. And it was Mr K's responsibility to ensure he had a valid motor insurance policy.

Admiral sent this service evidence of its underwriting criteria to show it wouldn't have continued to offer him insurance if it'd known Mr K had a MS90 conviction. Having reviewed this evidence, I accept cover wouldn't have been provided on renewal if Admiral had been given the correct information. It follows Mr K's misrepresentation was a qualifying one.

Admiral has said Mr K's misrepresentation was careless and I see no reason to interfere with this. As I'm satisfied Mr K's misrepresentation should be treated as a careless qualifying misrepresentation, I've looked at the actions Admiral can take. Having done so, I'm satisfied Admiral was entitled to avoid Mr K's policy in accordance with CIDRA. As this means – in effect – his policy starting in August 2022 never existed, Admiral does not have to deal with his claim following the accident in December 2022. Ordinarily it would need to return the premiums to Mr K in this type of situation, however, in light of the outstanding third-party claim, I can see it has retained this and confirms any balance will be claimed from or returned to him once the claim has been resolved.

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

I acknowledge Mr K says he was lied to and given false information, but I don't see things the same way. The call handlers I've listened to spoke in broad terms about the impact of convictions on claims. I don't consider they gave him any guarantees his specific claim would be paid - they were clear the matter would be looked into by the correct department

before a decision was made on this. As Mr K says, he raised this with them, so he was aware this was likely to be an issue. And Admiral was entitled to investigate and validate his claim. So, whilst I appreciate Mr K was disappointed his conviction meant the policy was avoided, I don't think it unreasonable or unfair the claim went through the validation process and was ultimately avoided. Even if I thought he'd been given the wrong information by the call handlers, it still wouldn't follow Admiral was wrong in its decision to avoid his policy.

I'm aware Mr K says he incurred costs as a result of the incorrect information he was given. I haven't seen any evidence these costs were because of something Admiral did wrong. Instead, it would appear as though these costs are a consequence of his policy being avoided and claim refused. So, I don't uphold his complaint point about this.

I recognise Admiral has awarded Mr K compensation for the failings in its service Mr K complained about. Taking the above into account, all the evidence provided and apologies it gave to Mr K, this is likely more than I would've recommended in this matter. I'm therefore satisfied Admiral has resolved the service aspects Mr K complained about in this matter in a fair and reasonable way and I won't be asking to do anything more to put things right.

### **My final decision**

For the reasons set out above, I've decided not to uphold Mr K's complaint. This means Admiral doesn't need to do anything more than it has already done to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 14 March 2024.

Rebecca Ellis  
**Ombudsman**