

The complaint

Mr C and Mr C complained that Admiral Insurance (Gibraltar) Limited avoided Mr C's motor insurance policy.

What happened

Mr C and Mr C are father and son. Mr C the son is the policyholder, but his father Mr C has brought the complaint on his son's behalf. For clarity I'll refer to them as Mr C senior and junior.

Mr C junior's car was in an accident, and a third party claimed against his policy. When dealing with the claim, Admiral noticed that Mr C junior had traffic offences as a result of which he had been disqualified from driving, and after which he had obtained a new licence.

Admiral said that they hadn't told them about that when Mr C senior renewed the policy and, if they had, they wouldn't have insured Mr C junior at all. They said that they had misrepresented the position to them, and because of this reckless qualifying misrepresentation they declared Mr C junior's policy as being void from outset. This means that Admiral treated the policy it as if it had never existed and wouldn't pay his claim. Admiral did pay the third-party claim, but Admiral wanted to recover those claim costs from Mr C junior. These were substantial.

The investigator didn't recommend that the complaint be upheld. They agreed that Mr C junior (with Mr C senior acting on his behalf) had made a reckless misrepresentation and that it was not unfair for Admiral to avoid his policy. Mr C and Mr C didn't agree and so I was asked to decide.

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 here is the Consumer Insurance (Disclosure and Representations) Act 2012. As the investigator noted, it says that a consumer needs to take reasonable care not to make a misrepresentation when taking out an insurance policy. If a consumer fails to take reasonable care, and their misrepresentation is a qualifying one, the insurer can take certain actions.

So I have looked at whether Mr C junior did take reasonable care not to make a misrepresentation, whether that misrepresentation was qualifying, and whether Admiral's actions then were in line with CIDRA. If a reckless misrepresentation has been made, under CIDRA can void the policy, keep the premiums Mr C junior has paid, and recover from him what money they have paid out to the third party.

Mr C senior had acted on Mr C junior's behalf in regard to the policy. Mr C senior had added Mr C junior to the policy in February 2022, as a named driver. He then added Mr C junior as a policyholder in about March 2022. Other adjustments were made that year.

Mr C junior had an SP30 driving conviction from 2018. That was disclosed and it appears on the motor policy confirmation proposals (MPCs) Admiral sent them. What does not appear is the TT99 motoring conviction which is a "totting up" conviction that Mr C junior received on February 2020. Totting up applies when a new driver receives a certain number of points in a particular period. Because of it, Mr C junior was disqualified from driving for a period. After that he was required to sit another driving test to obtain a new licence.

Reasonable care

Admiral said Mr C junior didn't take reasonable care when, Mr C senior acting on his behalf, he renewed his policy online in that he didn't disclose the TT99 totting up conviction. This meant that the policy documents did not mention it, and he had failed to tell Admiral that his policy documents were therefore incorrect.

Admiral said that it was Mr C's responsibility to check the documents issued and inform Admiral if anything in them was incorrect. The motor proposal confirmation(MPC) document gave clear warning that, if it wasn't correct, Admiral might avoid the policy.

From March 2022 Admiral sent several MPCs and so Mr C and Mr C had multiple opportunities to tell Admiral about the TT99 conviction. So Admiral considered it to be reckless and not a one-off mistake. So Admiral said that Mr C had made a reckless qualifying misrepresentation under CIDRA.

I've looked at the policy which said:

"1. Your duties

The cover in this policy is valid providing:

- *you or any other insured person have kept to all the terms and conditions of the policy*
- *the information confirmed on your current Motor Proposal Confirmation and when registering a claim is true and complete."*

So Admiral were clear here that the policy's validity depended on the truth and completeness of the information given to them.

The Motor Proposal Confirmation(MPC) Admiral issued said *"In the last 5 years, have you (or any named driver) had any motoring offences added to your driving records?"*

The MPC did show that Mr C junior had a previous SP30 conviction of 5 points in May 2018. But the MPC information was not correct because it did not include his TT99 motoring offence in 2020.

Admiral said that it was Mr C's responsibility to disclose that information and Admiral had given a clear warning about it. The MPC said to check it carefully and if any information was incorrect to contact Admiral immediately. Admiral issued this just after the renewal and several of them after other later policy adjustments, all before the accident, so Mr C had several opportunities to disclose the TT99.

I think the question Admiral asked was clear and specific. And Admiral have shown us their underwriting criteria that confirm they wouldn't have insured Mr C junior at all if he'd answered the question correctly and declared all his convictions. Whether they will insure or not is a commercial decision for Admiral to decide. So I'm satisfied that this

misrepresentation was a qualifying one. Was the qualifying misrepresentation deliberate/reckless or careless?

The motor policy confirmation (MPC) says at the top:

"You must check this document carefully because it is your record of the information you have provided and we have used this to assess the risk we're undertaking... if any information isincorrect, please contact us immediately. Failure to notify us of corrections or changes could mean we do not pay your claim, reduce the amount you are able to claim ,or even result in your policy being declared void."

Mr C senior completed the March 2022 renewal declaration on Mr C junior's behalf. Mr C senior admitted that he didn't tell Admiral about the TT99 conviction on the online form so didn't provide the correct information then. He hadn't disclosed it in February 2022 either when he added Mr C junior to the policy as a named driver. This means that when Admiral issued the MPC documents it included only the SP30 conviction and so it was not correct.

But Mr C senior said that he hadn't deliberately made a misrepresentation. He said that he did explain to Admiral the full circumstances surrounding Mr C junior's driving disqualification at the time of the last policy renewal, but he did not say that Mr C junior had a TT99 as he didn't know that the disqualification was designated as that. He said this was because they hadn't realised that there were specific totting up rules for new drivers. He thought that Admiral were the experts and so they should have realised that the disqualification was because of a totting up offence which would be designated as a TT99 and so Admiral shouldn't have quoted for the policy.

Mr C senior said that he had found the online forms confusing and he'd wanted Admiral to clarify the period that Mr C junior had held his licence. He wasn't sure whether it should be considered that Mr C had held a licence since 2017 when he got his first licence, or since 2022 when he'd passed his test again following his disqualification. So he was confused about what the new licence meant and so he asked Admiral for advice about it. He felt that he had acted in good faith and Admiral had given him the wrong advice.

He said that *" the TT99 absence from the Renewal Information they sent was to be expected as they advised me that ...(Mr C junior) ...was now considered to be a new driver as he had re-sat and passed both his practical and theory driving tests."*

Admiral acknowledged that they did have three phone calls with Mr C senior around the time of the renewal. But they no longer had recordings of those calls and their file doesn't show what was said then. However I can see from Admiral's file that Admiral did look for the recordings, before concluding that they had not been kept. Mr C senior thinks it is suspicious that Admiral can't produce the recordings which he says support his position. But while I agree that it is unfortunate that Admiral can't produce them, and so we only have his account of what he said in them, I can't see anything to suggest that Admiral have deliberately withheld those recordings.

Admiral did produce the recording of a call with Mr C senior on 16.2.23. This call took place after Admiral warned him that they were investigating the claim for possible misrepresentation.

I've listened to that recording. In it Mr C senior said that he didn't disclose the TT99 and so made an error when filling in the form, and that he had never disclosed it. He explained that it was a genuine error on his part because he had assumed that because Mr C junior had a new licence he started again. But what Mr C senior says in the 16.2 call gives the impression that his prior discussions with Admiral focussed of what having a new licence meant for Mr C

junior's no claims discount (NCD). I think it this does shed some light on the issue. Mr C senior admits that he didn't answer Admiral's question about previous convictions correctly as he had got the impression from Admiral when discussing NCD that it didn't matter as Mr C junior had a new licence.

However the issue around what NCD Admiral might offer Mr C junior in these circumstances is a very different issue from Admiral assessing what risk they are taking on before deciding to insure him. For that purpose it was irrelevant whether he had a new licence. But it was highly relevant that he had prior convictions.

Whether a potential insured has driving offences and disqualifications is fundamental to an insurer deciding to insure. The SP30 from 2018 had already been disclosed and appeared on the MPC so Mr C and Mr C must have known that driving convictions had to be disclosed. And logically, a driver who had been disqualified within the first two years of driving and had been required to re-sit a test before being allowed to drive again, presented a risk to Admiral.

So I think that Mr C and Mr C should have been expected to know that they should answer the question about driving offences in the last five years correctly and disclose the TT99. Admiral asked that specific question to obtain the information they needed in order to decide whether or not to insure Mr C junior. It was his obligation to answer their specific questions and not decide that it didn't matter because Mr C junior had a new licence. Mr C senior, acting on Mr C junior's behalf, knew that the information he was providing was untrue and knew that the matter to which the misrepresentation related was relevant to Admiral.

This is so fundamental to the insurer's assessment of risk that it is something that a consumer must be reasonably expected to know they should disclose. So even if Admiral did (which we can't confirm) say something to give Mr C senior the impression that he didn't need to disclose the TT99, in my view that would have been overridden by the question Admiral asked, and the MPC wording and the warning to contact them if there was anything incorrect. The file shows that due to changes Mr C and Mr C made to the policy, including Mr C junior going from named driver to an insured in March 2022, Admiral issued five MPCs. So Mr C and Mr C had several opportunities to disclose the TT99.

If Mr C and Mr C had read the MPCs, as we expect of consumers, and told Admiral them that it wasn't correct, Admiral wouldn't have insured Mr C junior at all and so wouldn't have incurred costs in paying the third party's claim.

Overall this means that , even if Mr C's failure to disclose the TT99 offence did arise from confusion, I still consider this reckless rather than careless.

I do think it's unfortunate because I don't think that Mr C or Mr C set out to mislead Admiral. However that doesn't make a difference here. In my view Mr C junior, or his Mr C senior acting on his behalf, did not take reasonable care not to make a misrepresentation when he failed to disclose the TT99 and this was a reckless qualifying misrepresentation.

A reckless misrepresentation is a qualifying one for CIDRA, and it entitles Admiral to avoid the policy as they have shown that they wouldn't have offered cover at all without the misrepresentation. So under CIDRA Admiral can avoid the policy. This means that Admiral can treat it as if it didn't exist from the start and can recover claim costs they have paid out. I can see that this will be disappointing for Mr C and Mr C. But in these circumstances, I don't think that Admiral have acted unfairly.

My final decision

For the reasons given above, it's my final decision that I don't uphold the complaint .

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mr C to accept or reject my decision before 27 August 2024.

A handwritten signature in blue ink that reads "R. Scott". The "R" is large and stylized, with a dot. "Scott" is written in a cursive script.

Rosslyn Scott
Ombudsman