

## **The complaint**

Mrs M complains that Admiral Insurance (Gibraltar) Limited avoided her car insurance policy (treated it like it never existed) and refused to pay her claim.

Mrs M's son Mr A is helping Mrs M with her complaint. For ease I will sometimes refer to Mr A's comments as Mrs M's as one in the same – where he is acting on her behalf.

## **What happened**

Mrs M took out a car insurance policy with Admiral Insurance in October 2021 which she renewed in October 2022. In January 2023 she reported the theft of one of her cars, insured under Admiral's multi car policy.

Admiral Insurance said Mrs M had answered the question it asked about the use of her car(s) incorrectly, where they were parked overnight, and that the claim wasn't genuine.

Admiral considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid the policy, keep the premium and not meet the claim.

Mrs M complained about a number of issues: in summary: about Admiral's decision, about the time it had taken to deal with the claim and its handling of the claim.

Admiral paid Mrs M £250 compensation in total for some delays in updating Mrs M while it investigated the claim. But it didn't uphold the remaining complaints.

Mr A on Mrs M's behalf brought her complaint to us. Our Investigator thought it shouldn't be upheld. She thought Admiral had done enough to resolve the complaint. She found it had fairly reached its decision to avoid the policy and decline the claim.

Mr A doesn't agree. He doesn't accept the information Admiral is relying on to make the decision it has. He has asked for an ombudsman's decision.

## **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 Insurance thinks Mrs M failed to take reasonable care not to make a misrepresentation when she renewed her policy – and in subsequent calls with Mr A shortly after the renewal date to add additional cars to Mrs M's policy.

Mrs M's policy schedule shows she requested cover for her to use car 'A' in October 2021. There were no named drivers under her policy.

On 11 October 2022, a day before the renewal date, Mrs M's son Mr A discussed the renewal premium with Admiral. He told Admiral they were going to buy additional cars and he asked if Admiral provided a fleet policy. The agent said Admiral didn't, but it was possible to add a temporary driver to the policy and/or it could provide a multi car policy.

During this discussion it transpired that Mr A wanted to use the cars for his business and wanted fleet insurance. He asked if Admiral provided a policy which allowed any person to drive a vehicle. Admiral said it didn't. This is because a motor trade commercial insurance policy would be more suitable in these circumstances.

According to the copy of the V5 registration document for car 'B', Mrs M acquired this car on 12 October 2022, which was the renewal date and the day after Mr A called.

On 17 October 2022 Mr A called Admiral to add car 'B' to Mrs M's policy. He asked and received a quote for insurance so that he could drive car 'B' but as he held a provisional licence, the price was significantly higher compared to insuring the car in Mrs M's name only.

Mr A paid for Admiral to provide comprehensive insurance for car 'B' for Mrs M on 17 October 2022.

On 20 December 2022 Mr A on Mrs M's behalf added car 'C' to Mrs M's multi car policy with Admiral.

Between 29 October 2022 and 14 June 2023, temporary drivers were added at different times on 25 occasions to Mrs M's multicar policy for cars 'B' and 'C'.

The theft of car 'B' was reported as taking place on 7 January 2023. A temporary driver (different to the person involved in the incident) had been added to Mrs M's policy and this cover ended on 6 January 2023.

Mrs M said her son had asked her if his friend could use her car, and she agreed. The friend said he had driven it to a party and while at the party somebody had stolen the car keys and stolen the car. Mrs M said the friend had separate insurance. The car was later recovered with the keys in it.

During its investigation Admiral discovered that Mr A was a Director of a business. That business is described as: *"Other letting and operating of own or leased real estate and Renting and leasing of cars and light motor vehicles."* Mr A acknowledged to Admiral that he is the Director of this business.

Admiral located a social media account linked to Mr A's name and business name which advertised cars for rent. The location under the account was the same city as the address for Mr A's business.

Admiral provided a screenshot of a post from this account dated 13 October 2022 – the day after Mrs M acquired car 'B' showing a picture of car 'B' and the registration plate with the heading; "Available get your bookings." Mr A has been provided with a copy of the screenshot.

Admiral said under the social media account there were images of cars located in a car park which Mr A confirmed was where Mrs M's cars were kept.

Admiral spoke to Mr A about its findings on 1 August 2023. Mr A said the account wasn't linked to him. Immediately after the call, Admiral found that this post and all posts relating to cars 'B' and 'C' were removed from the same account.

Admiral says Mrs M misrepresented the use of the cars insured with Admiral. From the information available, Admiral believes Mr A was using the cars for rent and hire under his business.

In response, Mrs M and Mr A disagreed. They said all of the temporary drivers added to the policy were friends and family helping Mrs M with daily errands when needed, such as shopping.

There were discrepancies as to which address the cars were being kept overnight. Admiral was given inconsistent information by Mrs M and Mr A. When Mrs M bought and renewed the policy, she said the cars were kept on the street outside Mrs M's home. Later Mrs M and Mr A said the cars were kept in a car park on the same street, but also at a different car park linked to Mr A's business.

Mr A said Admiral had caused confusion when it discussed where the cars were parked with Mrs M.

Admiral wasn't satisfied with the responses it received.

I've looked at all of the information provided by both parties. Having done so, from the policy proposal and schedule sent to Mrs M, and the calls around the renewal date in October 2022, I think Admiral was clear about the level of cover being provided and the type of use the policy provided cover for. So I agree with Admiral that Mrs M misrepresented information when she bought her policy with Admiral, and when she added cars 'B' and 'C'.

Admiral is relying on the following terms and conditions of Mrs M's policy in reaching its decision:

*"15. Changes in circumstances*

*You must tell us if any information on your Motor Proposal Confirmation changes.*

*If you make changes to your policy, you may have to pay an additional premium. Changes to your policy will also incur administration charges that are payable to EUI Limited for the cost of arranging and handling your policy. Details of these charges are available online and included in your welcome/renewal documents.*

*If you request a change and we are unable to continue cover, your policy will be cancelled.*

*On some occasions we may change the information from the date you were obliged to tell us.*

*Failure to keep your information up to date could affect your ability, or the amount you are able to claim. If your information differs significantly it could result in your policy being cancelled or declared void.”*

And;

*“We will not pay for any loss, damage or liability directly or indirectly caused or contributed to by: 1. Your vehicle being:*

*i)Rented out or used for a peer to peer hire scheme.”*

Admiral Insurance has provided evidence to show it wouldn't have offered a policy to Mrs M had it known the correct use of the cars.

This means I'm satisfied that Mrs M's misrepresentation was a qualifying one.

Admiral has classified the misrepresentation as deliberate or reckless. I agree the misrepresentation was deliberate in light of the discussions Mr A (on behalf of Mrs M) held with Admiral in October 2022. It's clear he had a reasonably good understanding that there were different policies available that would have been more suitable to match the business he held - and his intentions of use for the additional cars they intended to buy. I think Admiral made it clear that the cover under Mrs M's policy was not akin to a commercial policy for renting and hiring cars.

The screenshot advertising car 'B' for booking is dated the day after Mrs M acquired the vehicle. Mr A says the screenshot doesn't prove a link to him. However, Admiral has confirmed that immediately after speaking with Mr A about the social media account and its findings, the post and related posts for the cars insured with Admiral were removed.

The explanation as to why there were so many temporary drivers added to the policy – along with the timeline of the updates to the social media account, and the nature of Mr A's business – make it on balance unlikely to be plausible, a coincidence or an error.

As I'm satisfied Mrs M's misrepresentation should be treated as deliberate or reckless, I've looked at the actions Admiral Insurance can take in accordance with CIDRA.

CIDRA says the insurer can avoid the policy and keep the premiums. If there's a claim, the insurer doesn't have to pay this as effectively the policy never existed. And the insurer may also look to recover any costs it's paid to a third party on any claim after the misrepresentation.

Therefore, I'm satisfied Admiral Insurance was entitled to avoid Mrs M's policy in accordance with CIDRA. And, as this means that – in effect – her policy never existed, Admiral Insurance does not have to deal with his claim following the theft of car 'B'. As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Admiral Insurance to rely on it to avoid Mrs M's policy produces the fair and reasonable outcome in this complaint.

In relation to Mrs M's remaining complaints, I have focused on the salient points. But I have considered everything both parties have said.

Mr A said the salvage agent tried to sell car 'B' without their permission – and he says Admiral wouldn't sell it back to them without deducting a 45% fee. Admiral said it couldn't find any evidence to support this complaint. And I haven't seen anything to show that Admiral acted unreasonably here.

Admiral says the circumstances of the incident aren't genuine. My decision that Admiral acted reasonably in avoiding the policy means the claim isn't covered in any event. And as Mrs M confirmed the driver of the car at the time of the alleged theft wasn't a person listed under the policy, the following term under Admiral's policy applies:

*"We will not pay for any loss, damage or liability directly or indirectly caused or contributed to by:*

*1: your vehicle being:*

*A: used by a person or for any purpose not shown on your current Certificate of Motor Insurance."*

Admiral arranged for Mrs M, Mr A and the friend who Mrs M said was in possession of the car at the time of the incident to be interviewed.

Key points from the interview report are:

Mrs M said she used car 'B' occasionally. She said her son had recommended buying the car as her existing car was unreliable.

In a separate interview, Mr A said he had looked for quotes to insure himself for car 'B' but couldn't afford to. He said he had bought car 'B' to sell for a profit.

On interviewing the friend, he said he fell asleep at the party and when he woke the following day, discovered the car keys and his phone were gone.

Mr A said he received an alert to tell him car 'B' had been involved in a collision. Mr A said he asked a friend to drive him to the location and when they arrived, the police were there.

It isn't for us to decide whether a policyholder has acted fraudulently or not. Instead, I need to decide if Admiral acted reasonably on raising the fraud condition and taking the action it has. So I've looked at the policy, what Admiral has taken into account, and whether I think this was fair.

Admiral's policy says;

*"General Condition 9: Fraud and misrepresentation*

*You must always answer our questions honestly and provide true and accurate information. If you, or any other insured person or anyone acting on your behalf:*

- provides us with false, exaggerated or misrepresented information.*
- submits false, altered, forged or stolen documents.*

*We will take one or more of the following actions:*

- amend your policy to show the correct information and apply any change in premium.*
- cancel your policy, under certain circumstances this may be with immediate effect.*
- declare your policy void.*
- refuse to pay your claim or only pay part of your claim.*
- only pay a proportion of your claim.*
- keep the premium you have paid.*
- recover any costs incurred from you or any other insured person.*

*If we identify any fraud or misrepresentation, we will cancel or void any other EUI policies you are connected with.*

The Privacy Statement confirms, *“If false or inaccurate information is provided and fraud is identified details will be passed to fraud prevention agencies”*.

And;

*General Condition 2: Claims procedure*

*If you or your vehicle are involved in any type of incident, regardless of fault, you must:*

- *tell us about it within 48 hours.*
- *immediately report any incident involving malicious damage, theft or deliberate fire to the police and:*
- *support them in their investigation and any prosecution against the person responsible give us a Crime Reference Number within 24 hours, that relates to the incident you are reporting.*
- *give us all the information and documentation that we consider necessary to deal with your claim and policy. Please read in conjunction with General condition 17.*
- *send us any court documentation you receive in connection with the incident as soon as you receive it, including any claim form, writ, summons or bill.*
  - *tell us at once if you are charged with an offence or get any notice of prosecution, inquest or fatal enquiry.*
  - *give us a witness statement when requested.*
  - *co-operate with our investigation.*

*Failure to comply with the above could result in the claim being refused and/or your policy being cancelled.*

And;

*“Motor trade This policy is not to be used to facilitate the purchase, sale, rental or recovery of any vehicle:  
- for profit or in connection with a trade or business.”*

So I think Admiral clearly set out its terms and conditions when Mrs M bought her policy.

I think Admiral received inconsistent information from Mrs M and Mr A in relation to the use of car ‘B’ and the circumstances of the incident. So, putting all of its concerns together, I don’t think it was unreasonable for Admiral to decide the fraud and motor trade condition of the policy had been breached. And having reached that conclusion, I don’t think Admiral acted unreasonably in rejecting Mrs M’s theft claim for damage to the car.

Admiral has confirmed it hasn’t applied a fraud marker.

Mr A says Admiral incorrectly said it had settled the claim and intended to dispose of car ‘B’ in an email.

This isn’t a complaint Admiral has directly responded to, but I can see from its notes that in a call with Mr A on 12 October 2023 it apologised for the error in issuing an automatically generated email. I agree that this email provided conflicting information about car ‘B’. But I understand Admiral subsequently arranged for Mrs M and Mr A to collect the car from the salvage agent if they wished. So I don’t think Admiral needs to do any more as I think its apology for the error in the wording of the email is enough to put things right here.

I think there were times when Admiral could have provided updates sooner. I’ve also considered that Mr A was in contact with Admiral regularly requesting an update on the claim.

Given Admiral's concerns, it took longer than usual to investigate the claim and for Admiral to reach its decision. Unfortunately I think this was inevitable in these circumstances. But for some delays during the investigation, I think the £250 compensation Admiral paid is enough to resolve this complaint.

### **My final decision**

I realise that Mrs M and Mr A will be very unhappy with my decision. But for the reasons set out above, I've decided not to uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 29 August 2024.

Geraldine Newbold  
**Ombudsman**