

## The complaint

Miss D and Mr S have complained that Admiral Insurance (Gibraltar) Limited ('Admiral') avoided their policy and refused to pay their claim under their home contents policy.

As Miss D mainly seemed to deal with the complaint, for ease, I will normally only refer to her.

## What happened

Miss D took out a contents insurance policy with Admiral. She obtained a quote through a price comparison website and was then transferred to Admiral's website to accept the quote.

Mr S later contacted Admiral online to make a claim. As part of logging the claim, he was asked "*Do you or anyone else who lives in the home have any UNSPENT criminal convictions or have any pending prosecutions?*". Mr S answered "Yes". Admiral reviewed the policy because this hadn't previously been disclosed. It said it wouldn't have offered the policy if it had known about the conviction. It considered this to be a careless/deliberate or reckless qualifying misrepresentation, which it said entitled it to void the policy back to the start date. It also refunded the premium.

Miss D complained to this Service. Our Investigator thought the complaint shouldn't be upheld. He said Mr S had a conviction, which Admiral required to be disclosed. He said it was reasonable for Admiral to treat this as a qualifying misrepresentation and to void the policy, decline the claim and return the premium.

Miss D didn't agree. She said she had correctly answered the question on the price comparison website and Admiral hadn't made it clear that the conviction needed to be disclosed. She asked for an ombudsman's decision.

I issued my provisional decision on 20 November 2024. In my provisional decision, I explained the reasons why I was planning to uphold the complaint. I said:

*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 thinks Miss D failed to take reasonable care not to make a misrepresentation when she took out the policy. It's my understanding that Admiral accepts Miss D correctly answered the question asked by the price comparison website. However, it said the Admiral policy documents Miss D was sent after she took out the policy said she needed to inform Admiral of any convictions, which she didn't do.*

*It's my understanding that Mr S was convicted of a motoring offence a couple of months before Miss D took out the policy. I've looked at what Miss D was asked on the price comparison website. Miss D had to confirm the following:*

*"Neither I nor anyone living in the house have been convicted of, or is awaiting trial for, any crime excluding motoring offences."*

*Admiral accepts Miss D answered this correctly and that she didn't need to declare the motoring conviction in response to this statement. Miss D was then transferred to Admiral's website so she could accept the quote. It's my understanding that, before she accepted the quote, Admiral didn't ask Miss D any further questions about convictions or tell her that it had a different approach to motoring offences than had been stated on the price comparison website. Miss D accepted the quote and was issued with the policy documents. When Admiral found out about the conviction, it said the policy documents that had been issued required Miss D and Mr S to declare any convictions and this included motoring offences. Admiral quoted policy wording that said:*

*"Please tell us immediately if any of the following happen.*

*You or anyone living with you is convicted of, has been charged with or waiting to hear about being charged for a criminal offence."*

*I've looked at the policy booklet. This wording was on page 16 of a 72-page policy booklet. I would generally expect policyholders to read policy documents. However, given Admiral has said its position on motoring offences is different to that of the price comparison website, I also think it's reasonable to expect it to have highlighted this difference. It didn't do that at the point of sale and it didn't do that in the policy wording. I don't think Admiral made it clear that motoring offences needed to be declared.*

*Admiral also sent this Service a screenshot from the price comparison website, which explained how to check if a conviction was spent. It told this Service:*

*"We would have expected the customer to use the links that [the price comparison website] provided to establish if the conviction was unspent, as the motoring offence committed did result in an actual conviction which carried with it a custodial sentence. As there was a custodial sentence linked to the offence whether it was linked to a motoring offence or alike there would be rehabilitation periods that would need to be satisfied before the conviction became spent."*

*However, the price comparison website said motoring offences didn't need to be declared and Admiral accepts Miss D correctly answered the statement on that website. So, I can't see that she had any reason to check if the conviction had been spent. She was under the impression that the motoring conviction was irrelevant.*

*This Service asked Admiral to provide its underwriting criteria. It initially only provided the rehabilitation rules, which stated the legal position on when convictions that resulted in a prison sentence were spent. When I asked it to provide the underwriting criteria, all Admiral provided was the details of how a conviction should be recorded on its system. I don't think*

*this was enough information to show Admiral's position on how a conviction affected whether it would offer a policy or on what terms.*

*Miss D also told this Service that she struggled to find a new policy after the policy was voided. So, she said she had recently phoned Admiral and asked about motoring offences and was told this wasn't relevant to home insurance policies. I asked Admiral about this. Admiral told this Service:*

*"In terms of our question on our journey ... I just wanted to highlight that we say 'you do not need to tell us about SPENT convictions or any motoring offences'. But in terms of motoring offences, we mean speeding offences (SP30's/SP50's), using a handheld device (CU80) and alike which would not result in an actual conviction with custodial sentences. Any motoring offence which would result in an actual custodial conviction would need to be checked against the rehabilitation guidelines to see if it no longer needs to be disclosed."*

*This is a far more detailed explanation than it provided to Miss D and Mr S at any point during the sale of the policy that was voided or in the policy documents. I also think Admiral's explanation also shows how difficult it is to understand its position on convictions. It voided the policy because it said convictions needed to be declared, including motoring offences. However, it has told this Service that what it needs to know about is "an actual conviction with custodial sentences". So, it doesn't need to know about all convictions. It only needs to know about "actual convictions". In the circumstances, it appears there is a misunderstanding on Admiral's part, as it appears to be under the impression that someone is only convicted of an offence if it results in a prison sentence. But, it's my understanding that where someone is convicted by a court, there are a range of sentencing options available, one of which is a prison sentence.*

*Having thought about what happened, I'm not satisfied it was fair for Admiral to decide Miss D made a misrepresentation. I think Miss D provided accurate information based on what she was asked. In this case, I also think Admiral's position on convictions for motoring offences and convictions is very unclear. Based on everything I've seen, I don't think I can fairly say it was reasonable for Admiral to void the policy.*

*As a result, I currently intend to require Admiral to reinstate the policy and remove all reference to its voidance from internal and external databases. It should also consider the claim if Miss D and Mr S still want it to do so. I've also thought about compensation. I think Miss D and Mr S have been caused distress and inconvenience by the actions of Admiral. So, I currently intend to say Admiral should pay £250 compensation to reflect the impact on them.*

*Miss D and Mr S should also note that as the premium was refunded to them, Admiral is likely to require them to make the payment for the policy again for it to reinstate the policy.*

*I asked both parties to send me any more information or evidence they wanted me to look at by 4 December 2024. Both parties replied before that date and didn't have further comments on my 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.*

*Having done so, I uphold this complaint and for the reasons given in my provisional decision. I've reviewed this complaint again and I haven't found any reason to change my view on what is a fair and reasonable outcome to this complaint.*

### **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that this complaint is upheld. I require Admiral Insurance (Gibraltar) Limited to:

- Reinstatement the policy.
- Remove references to its voidance from internal and external databases.
- Consider the claim, if Miss D and Mr S still wants it to do so.
- Pay £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D and Mr S to accept or reject my decision before 1 January 2025.

Louise O'Sullivan  
**Ombudsman**