

## **The complaint**

Mr P has complained that Admiral Insurance (Gibraltar) Limited avoided his car insurance policy and turned down his claim under it.

Any reference to Admiral includes its agents.

## **What happened**

Mr P insured a car, which I'll refer to as vehicle L, under a multi-car insurance policy with Admiral. The car was damaged extensively in an accident when it was being driven by a named driver, who I'll refer to as Mr J. Mr P claimed under his policy for the car. He was initially given the impression the claim would be accepted. But, after interviewing Mr P and Mr J, Admiral avoided the policy and turned down the claim. This was on the basis Mr P misrepresented the use of vehicle L when he added it to the policy. And because it concluded it was rented out to the named driver at the time of the accident.

Mr P complained to Admiral about its decision on the policy and the claim. He also said he was unhappy with the way it had handled the claim and the fact it had incorrectly pursued him for outstanding premium. Admiral provided final responses on the complaint. It agreed it could have handled the claim better and offered compensation for any distress and inconvenience Mr P had experienced. And it agreed it should not have pursued him for outstanding premium. However, it wouldn't alter its position on avoiding the policy and refusing the claim.

Mr P asked us to consider his complaint. One of our investigators did this. He said Admiral shouldn't have avoided Mr P's policy and should instead have cancelled it, having given Mr P notice it intended to do so. But he didn't think Admiral needed to settle Mr P's claim, as he was satisfied it was entitled to rely on the policy terms that excluded claims for loss or damage when the insured vehicle was being rented out. He did however think Admiral should pay more compensation for distress and inconvenience due to its incorrect decision to avoid the policy.

Mr P isn't happy with the investigator's view. He still maintains he lent vehicle L to Mr J as opposed to renting it to him. He's also said that, even if the vehicle was rented, Admiral should only rely on the policy terms if it can show that the fact it was rented out was material to the loss, i.e. the damage wouldn't have happened unless the vehicle was rented out. In Mr P's opinion the fact it was rented would not be material to the loss. He's also mentioned that if Admiral had given notice to him it was going to cancel the policy, he'd have taken the decision to cancel it himself. And he thinks Admiral should have decided to cancel it earlier than the investigator suggested. He also thinks he should receive more compensation for distress and inconvenience.

Admiral has agreed with the investigator's view on the complaint.

## **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.

I agree with our investigator that Admiral has not done enough to show it was entitled to avoid Mr P's policy. I say this because it hasn't really shown that he clearly made a misrepresentation about the use of vehicle L when he added it to the policy.

In view of this, I agree that Admiral needs to treat the policy as if it was cancelled from 6 June 2024 and provide any additional refund of premium due from this point, plus interest. I have noted Mr P's point that there were other delays with the claim that our investigator didn't pick up on and the cancellation date used should be earlier. But I'm satisfied that it is fair to use 6 June 2024 as the cancellation date in all the circumstances. I also appreciate Mr P has suggested he would have cancelled the policy prior to Admiral doing so if he'd had notice of its intention to do so. But it's not possible to know what would have happened if Admiral had threatened to cancel the policy. So, I think provided Admiral alters any records on its system and on any external databases to show the policy as cancelled, as opposed to avoided, that's good enough.

I've also noted Mr P's comments around the fact that if the avoidance of the policy wasn't valid, Admiral needs to consider his claim in accordance with the policy terms. But I'm satisfied it has already done this and made it clear enough it would not have dealt with the claim even if it hadn't avoided the policy. I say this because in its letter about avoiding the policy Admiral also mentioned the policy terms around insured vehicles being rented out. So, like our investigator, I have considered whether Admiral has done enough to show it is entitled to rely on these terms.

Basically, there are two terms in the policy that Admiral thinks it can rely on to reject the claim. The first is an exception which says Admiral will not pay for any loss, damage or liability directly or indirectly caused or contributed to by the insured vehicle being rented out. The second is a condition which says the policy is not to be used to facilitate the rental of any vehicle for profit.

I've read Mr J's statement to Admiral and seen the car agreement he signed along with Mr P. And I'm satisfied that Admiral has shown on the balance of probabilities, i.e. that it is more likely than not, that vehicle L was rented out to Mr J by Mr P at the time of the accident in which it was damaged. I say this because Mr J made it quite clear in his statement that he hired the vehicle. And the agreement he signed, although referring to a payment for depreciation, refers to rental and looks to me like a rental agreement. I appreciate in an early call to the insurer Mr J said he'd borrowed vehicle L, but he was clear in his statement that he rented it from Mr P. And the term borrowing can have different contexts. So, this doesn't alter my view that Admiral has shown it is more likely than not that vehicle L was rented to Mr J at the time it was damaged.

I've also taken into account that Mr P had previously received payments for his car, which he put down to potential buyers. But I think the evidence around this and the payment from a car rental website do support Admiral's view that he rented his car to Mr J.

Strictly speaking Admiral does not have to show that the fact the vehicle was rented out was material to the loss, i.e. the risk of damage to the vehicle or the loss of the insured vehicle increased because Mr P rented it out. This is because the term which says Admiral will not pay for loss or damage caused by or contributed to by the insured vehicle being rented out is an exception and not a term of the policy Mr P had to comply with, as per the Insurance Act 2015. However, I agree in principal that it would not produce a fair and reasonable outcome to Mr P's complaint if Admiral relied on either of the abovementioned policy terms if it was clear that the fact that the insured vehicle was rented out at the time it was damaged was immaterial.

Mr P has argued that the accident in which vehicle L was damaged would have happened anyway if he hadn't rented it to Mr J. However, I do not agree the fact it was rented out and being driven by Mr J at the time it was damaged was immaterial. The fact is the reason the accident happened was that Mr J was driving the vehicle; and he was, in my opinion, doing so because Mr P had rented it to him. And I think this in itself makes the rental material to the loss, i.e. the damage that occurred.

In the circumstances, I see no reason why Admiral shouldn't be able to rely on the abovementioned policy terms to reject Mr P's claim.

Finally, I agree Admiral caused some delays on the claim and incorrectly gave Mr P the impression at one point it had been validated. And I think these things and its incorrect decision to use the avoidance of the policy as part of the reason for refusing Mr P's claim caused him unnecessary distress and inconvenience. But I'm satisfied that the further £225 suggested by our investigator as compensation for this is fair and reasonable.

### **Putting things right**

For the reasons set out above, I've decided to uphold Mr P's complaint and make Admiral do the following:

- Change any record of the avoidance of Mr P's policy to a cancellation with effect from 6 June 2024.
- Refund any additional premium due as a result of the cancellation date being 6 June 2024, plus interest at 8% per annum simple from 6 June 2024 to the date of payment.\*
- Pay Mr P a further £225 in compensation for distress and inconvenience. Admiral must pay the compensation within 28 days of the date on which we tell it Mr P accepts my final decision if he decides to do so. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

I should however make it clear that I do not expect Admiral to settle Mr P's claim for vehicle L.

\* Admiral must tell Mr P if it has made a deduction for income tax. And, if it has, how much it's taken off. It must also provide a tax deduction certificate for Mr P if asked to do so. This will allow Mr P to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.

### **My final decision**

I uphold Mr P's complaint and require Admiral Insurance (Gibraltar) Limited to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 4 March 2025.

Robert Short  
**Ombudsman**