

The complaint

Miss M has complained that Admiral Insurance (Gibraltar) Limited paid her only a proportional settlement of her claim on her motor insurance policy following the loss of her car. She's also unhappy with its level of service and changes in the settlement offered.

What happened

Miss M took out a motor insurance policy with Admiral. When her car was damaged whilst parked and unattended, she made a claim on her policy. But Admiral would only pay her a proportion of the valuation it made for her car.

When Miss M complained, it said she'd answered the question she'd been asked about her estimated annual mileage incorrectly. And that it considered this to be a careless qualifying misrepresentation, which entitled it to settle her claim proportionately.

Miss M said she was unable to replace her car with a like one for Admiral's offer. She thought the proportionate settlement was unfair. Admiral agreed there had been service failings and it had changed the settlement offer. And it offered Miss M £250 compensation for the trouble and upset this caused.

Miss M brought her complaint to us and our Investigator thought it should be upheld. He didn't agree there had been a qualifying misrepresentation. He thought Miss M had taken reasonable care to provide an estimate of her expected annual mileage. And so he thought it was unfair for Admiral to settle the claim proportionately.

He thought Admiral's valuation of Miss M's car was fair and reasonable. And he thought it should pay Miss M the amount it had deducted, adding interest. But he thought Admiral should increase its compensation payment to £500 to better reflect the impact of its level of service on Miss M.

Admiral doesn't agree with the Investigator and has asked for an Ombudsman's decision. It said the policy's terms and conditions required Miss M to update her mileage if she was going to exceed her estimate on the proposal.

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.

Miss M said she was unable to replace her car with Admiral's settlement. I can understand that this has caused her another difficulty following the loss of her car through no fault of her own.

Admiral said it had reduced the settlement because Miss M had misrepresented her expected annual mileage. So I'm satisfied that the relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it is entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

Admiral thinks Miss M failed to take reasonable care not to make a misrepresentation when she stated in her application that her expected annual mileage was 10,000. And I've looked at the question she was asked when she completed the application.

The online mileage question provided further information stating:

"This is the mileage you expect your car to cover over the next 12 months. Please estimate this amount as accurately as possible, any significant differences may affect your cover".

And I think this was a clear question asked by Admiral.

Miss M stated 10,000 and she's explained that this was her usual annual mileage. But when Miss M made her claim, Admiral found that she had exceeded this amount, and it estimated that her annual mileage for the full year was closer to 16,000.

Miss M has explained that this increase was exceptional as she had unexpected additional work destinations included in her commute, and she had to travel long distances due to a bereavement. I'm persuaded that Miss M wouldn't have known or expected these changes when she completed her application. And so I'm satisfied that Miss M took reasonable care not to make a misrepresentation in her application when she said her annual expected mileage would be 10,000.

Therefore, I'm not satisfied Admiral was entitled to settle Miss M's claim proportionately in accordance with CIDRA. And – as CIDRA reflects our long-established approach to misrepresentation cases, I think not allowing Admiral to rely on it to reduce Miss M's settlement produces the fair and reasonable outcome in this complaint.

There's no ongoing duty under CIDRA for the consumer to advise an insurer of any changes in their circumstances once the contract begins. But Admiral has also said that Miss M should have complied with a policy term and condition and updated her mileage if she expected to exceed her estimate.

I think insurers usually include a condition in the policy which requires the consumer to advise it of any changes after the policy has started. This is known as an ongoing duty of disclosure. These are often referred to as "change in risk clauses".

And we'd expect the insurer to highlight this sort of term at the start of the policy and make sure it clearly sets out the changes it wants to know about. If it doesn't do this we may not consider it fair for an insurer to take any action if the consumer fails to tell them of a change in circumstances.

Admiral referred to a General Condition in the policy, found on page 29 of the policy booklet:

"15. Change in circumstances

2. Tell us immediately if any information shown on the Motor Proposal Confirmation changes.”

But I can't see that Admiral highlighted this requirement when Miss M started her policy. The Motor Proposal Confirmation asks her to correct any errors in the proposal. But it doesn't explain that this is an ongoing requirement.

And I can't see that Admiral has set out that changes in the estimated annual mileage should be immediately notified. Under the above General Condition it lists significant changes such as disqualification. So I don't think Admiral highlighted the requirement at the start of the policy and it didn't state that it needed to know about increased mileage. So I think it was unfair for Admiral to rely on this to reduce Miss M's settlement.

Our Investigator thought that Admiral's valuation of Miss M's car was fair and reasonable. Miss M's policy provides for the car's market value in the case of its total loss. I can see that this is defined in the policy booklet as:

“The cost of replacing your vehicle; with one of a similar make, model, year, mileage and condition based on market prices immediately before the loss happened. Use of the term ‘market’ refers to where your vehicle was purchased. This value is based on research from industry recognised motor trade guides”.

The Investigator has explained this service's approach to car valuations. We don't provide valuations for cars but look to whether the insurer's offer is reasonable. In most cases, we assess the market value as the price which the consumer would have had to pay for a comparable vehicle across the various markets, immediately before the time of the damage or loss.

This could be slightly less than advertised retail prices, although this will depend on the most likely market for the particular age and model of vehicle. Because of recent changes in the market, we are increasingly hearing of cars selling either for or close to their advertised price.

Assessing the value of a used vehicle isn't an exact science. We generally find the valuations given in motor valuation guides most persuasive. These guides are based on extensive nationwide research of likely selling prices. We also take all other available evidence into account, for example, engineer's reports, advertised prices and independent valuations.

I've checked how the Investigator came to his conclusion. I can see that he looked in the motor trade guides we use for cars of the same make, model, age, mileage, condition and optional extras as Miss M's car at the date of its loss.

Given the current challenges in the used car market the motor valuation guides have a wider range of values than we have seen previously. And we think going by the highest will ensure consumers have received a fair offer, allowing them to replace their car with one of the same make, model and specification. So we now expect insurers to pay the highest of the motor guides, unless they are able to provide us with evidence which supports a lower valuation.

Admiral had provided a valuation of £5,566, which was in keeping with the highest of the valuations provided by the guides. Miss M hasn't provided any other evidence to persuade me that this valuation is unfair.

And so I agree that Admiral's valuation was fair and reasonable as it was made in keeping with our approach and the policy's terms and conditions.

Admiral paid Miss M this valuation with a deduction for the unfair misrepresentation. And so I'm satisfied that it should now pay her the outstanding balance, £888.33, adding interest as Miss M has been without her money for some time.

Admiral agreed that its level of service had been poor. And Admiral offered Miss M £250 compensation for this trouble and upset. I think that's usually in keeping with our published

guidance where the impact of an error has been felt over a month. But I'm not satisfied that it's sufficient for the following reasons.

Miss M hasn't received this payment. Admiral's file shows that it sent this as a cheque and Admiral hasn't responded to Miss M's concern that this wasn't received. Miss M wasn't able to replace her car, which she needed for work, with a similar one due to Admiral's unfair proportionate settlement. She's been caused considerable stress and trouble over seven months in getting this matter resolved.

And so I agree with the Investigator's recommendation that the compensation should be increased to £500. I think that better reflects the impact of Admiral's errors in keeping with our published guidance.

Putting things right

For the reasons given above, my final decision is that I uphold this complaint. I require Admiral Insurance (Gibraltar) Limited to do the following:

1. Pay Miss M £888.33 further in settlement of her claim, adding interest to this amount at the rate of 8% simple per annum from the date of the initial payment to the date of settlement†.
2. Pay Miss M £500 in total compensation for the distress and inconvenience caused by its handling of her claim.

†If Admiral considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss M how much it's taken off. It should also give Miss M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require Admiral Insurance (Gibraltar) Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 4 June 2025.

Phillip Berechree
Ombudsman