

## **The complaint**

Mrs O complains that Admiral Insurance (Gibraltar) Limited ('Admiral') placed a fraud marker about her on an external database after it voided her car insurance policy.

## **What happened**

Mrs O took out a car insurance policy provided by Admiral which started in September 2019. In November 2020 she made a claim on this policy.

After this claim was made, Admiral wrote to Mrs O to say it had checked her driving history and found that she had received an IN10 conviction in September 2018 for driving without insurance which she hadn't disclosed to it. So, it asked Mrs O to explain why this wasn't disclosed.

Mrs O replied saying she didn't think she needed to disclose the conviction because between receiving it and taking out her policy her driving license was revoked, she'd applied for and received a new license, and she'd paid the penalty for the conviction.

Admiral subsequently decided to void the policy, and it wrote to Mrs O on 9 December 2020 to inform her of this saying that it wouldn't have insured her if she had disclosed the IN10. So, it believed that she had made a misrepresentation by not informing it of this conviction, and as such was voiding her policy from the inception date and retaining the premium.

Following the voidance, Mrs O says she experienced difficulties in taking out other financial products and became aware that Admiral had recorded her details on the CIFAS fraud register, without it having informed her it had done this. So, she complained to Admiral about the fraud marker.

Admiral provided a final response to this complaint on 28 November 2024. It said it couldn't remove Mrs O's name from the fraud register because she didn't disclose her IN10 conviction from 2019 and as part of its processes, it declares any convictions it is aware of to the databases.

Dissatisfied with this response, Mrs O brought her complaint to us. Our investigator didn't think Admiral had acted fairly. She said she agreed Mrs O should have informed Admiral about the IN10, but didn't think Admiral had shown on balance that her omission amounted to fraudulent activity. So, to put this right, the investigator recommended Admiral remove the record from the CIFAS database and pay Mrs O £200 for the distress and inconvenience caused.

Mrs O accepted the investigator's opinion. But Admiral did not. It said that CIFAS agreed with its filing and thought Mrs O should have disclosed the conviction she was aware of.

Because Admiral didn't agree, the complaint was referred to me 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.

Having done so, I've decided to uphold this complaint. I'll explain why.

Under the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') a consumer is required 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.

However, it does not automatically mean that a consumer has acted fraudulently if they have failed to take reasonable care not to make a misrepresentation.

CIDRA says that a qualifying misrepresentation can either be *deliberate or reckless*, or *careless* and provides the following description of each:

- “(2) A qualifying misrepresentation is deliberate or reckless if the consumer—
- (a) *knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and*
  - (b) *knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.*
- (3) A qualifying misrepresentation is careless if it is not deliberate or reckless.”

This distinction is important, because it reflects the different levels of fault and intent behind the consumer's actions. Careless qualifying misrepresentations involve a failure to take reasonable care but lack any deliberate intention to deceive or reckless disregard for what is true and accurate, and as such aren't usually treated as fraud.

Admiral voided the policy from the inception date, retained the premium and said in the voidance letter it had taken these actions because it believed the policy had “*not been honestly presented*” and that Mrs O was in breach of the requirement to present her policy in good faith. These actions and comments are consistent with a belief that the misrepresentation was deliberate or reckless.

Admiral's file notes show that Mrs O provided it with the same explanation she gave us as to why she didn't disclose the IN10 – that she thought this conviction was removed after she reapplied for her license.

But I don't think Admiral has shown it considered Mrs O's explanation why she didn't disclose the IN10, and why it rejected her explanation and concluded instead that she had acted dishonestly and deliberately withheld the details of the conviction.

I acknowledge Admiral has provided correspondence between itself and CIFAS in which CIFAS said from the information Admiral provided the conviction should have been disclosed and the filing would appear valid. But Admiral didn't set out in this correspondence the

explanation Mrs O gave on why she didn't disclose the IN10, or why it rejected this explanation.

I don't dispute that if Mrs O had an IN10, and Admiral asked her if she'd had any convictions in the last five years, that she would have needed to disclose this. And I don't think Mrs O's explanation why she didn't disclose it was reasonable. But Admiral says that Mrs O committed fraud by not telling it about the conviction, not just that she made a misrepresentation. So, it is not enough for Admiral to just show that Mrs O made a misrepresentation.

Ultimately, if Admiral believes that Mrs O acted fraudulently, the onus is on it to demonstrate this was the case. In order for me to find that Admiral acted fairly by applying a fraud marker, I would need to be satisfied on balance of probabilities that Mrs O acted dishonestly. That would require evidence that she deliberately intended to mislead Admiral.

But Admiral has not engaged with the explanation Mrs O gave for why she didn't disclose her conviction, nor has it provided any substantive justification for why her explanation was untruthful or implausible. In the absence of such reasoning, I am not persuaded Admiral has shown, on balance, that it was reasonable to conclude that Mrs O acted dishonestly.

As such, I do not consider it fair for Admiral to have applied a fraud marker in these circumstances. And to put this right, Admiral should remove the fraud marker and write to Mrs O to confirm the marker was added in error. In addition to this, for the distress and inconvenience which it caused, Admiral should pay Mrs O £200, which I consider a fair and reasonable amount for the impact caused.

### **Putting things right**

I require Admiral to do the following:

- Remove the fraud marker from any internal and external databases.
- Write a letter to Mrs O to confirm the fraud marker was added in error.
- Pay Mrs O £200 compensation for the distress and inconvenience caused.

### **My final decision**

My final decision is that I uphold this complaint, and I require Admiral Insurance (Gibraltar) Limited to carry out what I've set out in the 'Putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 1 August 2025.

Daniel Tinkler  
**Ombudsman**