

## **The complaint**

Mr A complains Admiral Insurance (Gibraltar) Limited unfairly avoided his home insurance policy.

## **What happened**

Mr A made a claim on his home insurance policy in 2022. His home had been broken into and extensive damaged caused. Admiral reviewed the claim but didn't agree to pay it. It said Mr A had failed to disclose a pending criminal conviction when he renewed his policy in 2019. It considered this to be a misrepresentation. And in these circumstances the relevant law entitles it to 'avoid' the policy – cancel it as it never existed – back to the date the misrepresentation was made. However as it considered the misrepresentation to be careless, it returned his premiums as required under the law.

Mr A complained to Admiral. He said he hadn't been convicted of anything, and he wasn't aware he needed to disclose charges awaiting trial. He said it wasn't a pending conviction because he intended to plead not guilty. He also complained about the length of time it had taken for the claim to be reviewed, and the poor communication from Admiral throughout.

Admiral didn't agree to change its position on the claim. But it accepted it had taken longer than it should have to review it. And it accepted Mr A had been promised call backs which then didn't happen. It offered £100 compensation for the unnecessary distress and inconvenience it had caused. Mr A didn't accept that, so brought the complaint to this service. He said Admiral's delays had meant he ended up selling his property for about £15,000 less than he would have otherwise done.

Our investigator thought Admiral had acted reasonably in avoiding the policy. He said there had been delays in the claim, but £100 was a reasonable offer of compensation in respect of those.

Mr A didn't accept the outcome. As he didn't agree, the matter has come 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.

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 Mr A failed to take reasonable care not to make a misrepresentation when he didn't tell it at renewal in 2019 that he'd been charged with a criminal offence earlier in the year.

I've looked at the information provided to Mr A at renewal in 2019. On the home proposal confirmation form, it says the details must be checked. Mr A says this proposal form only mentioned convictions, so as he hadn't been convicted, he didn't think he needed to declare it. I accept Mr A's point that it's not clear he'd need to declare it on the proposal form. The proposal form also says Mr A needs to read another document, his 'guide to home insurance' document. In that, it clearly says Mr A needs to let Admiral know if he has been charged with a criminal offence. But, I accept Admiral could have done more to highlight this to Mr A. However, even if I accept Mr A did take reasonable care in 2019, in later policy years, Admiral did more to highlight that it wanted to know about any criminal offences.

From 2020 (the following policy year) at renewal, the email sent to Mr A directed him to a specific section of his policy booklet to check the details were correct. It also said that Mr A's policy could be cancelled if there is false or inaccurate information provided. And in the relevant section of the policy booklet Admiral referred him to, it says Admiral must be informed if anyone living at the property has been charged with a criminal offence. So I'm satisfied Mr A failed to take reasonable care to correct this information. That means he made a misrepresentation at this point.

Mr A says he often called up to renew his policy and add or change things, and he was never asked about criminal charges. Admiral no longer has a copy of these calls. But even if I accept Mr A wasn't asked specifically about criminal charges during the phone call, I still consider he didn't take reasonable care to not make a misrepresentation.

Admiral can only avoid the policy if it can show Mr A's misrepresentation was a qualifying one. This means it has to show it would have acted differently, had Mr A disclosed his criminal charges. Admiral has provided evidence from one of its senior underwriters, which confirms had Mr A disclosed his criminal charge, it wouldn't have renewed the policy. This means I'm satisfied Mr A's misrepresentation was a qualifying one.

Admiral has said it has treated Mr A's misrepresentation as '*careless*'. As the most favourable outcome for Mr A in the circumstances, I'm not going to interfere with its decision to do so. So I've looked at the actions Admiral can take in accordance with CIDRA when it treats a misrepresentation as careless.

It is entitled to cancel the policy back to the date of the misrepresentation and return any premiums paid to the consumer. So I'm satisfied Admiral can avoid Mr A's policy. This means that – in effect – his policy never existed. Admiral has done this back to 2019. Having considered everything, I'm not satisfied the 2019 renewal was clear enough to say Mr A made a careless misrepresentation. However, I think it's fair for Admiral to avoid the policy back to 2020. It's shown its underwriting criteria for that year hadn't changed and it still wouldn't have offered Mr A cover.

I consider Admiral avoiding the policy back to 2019 leaves Mr A in no worse position. Admiral has in effect refunded premiums for a further year it didn't need to. And since the property is now being sold (or already has been), there is no risk of a valid claim being raised for the policy year of 2019-2020. So I'm not going to interfere with Admiral's decision to avoid it back to 2019.

So it follows, since the policy doesn't exist - that Admiral doesn't have to deal with the claim Mr A made for damage to his property in 2022. As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Admiral to rely on it to avoid Mr A's policy is the fair and reasonable outcome in this complaint.

I accept it took Admiral longer than I'd expect to give Mr A his outcome. It's offered £100 to apologise for that delay. I think this is reasonable in the circumstances, given the delay didn't

cause detriment of a valid claim. Mr A has said the delay meant when he sold his property, he received a lot less money for it. I'm not persuaded Admiral is at fault for any loss of value in Mr A's property by delaying the outcome to the claim, and Mr A hasn't provided any evidence to support this. So I'm not going to ask Admiral to do anything differently.

### **My final decision**

My final decision is that I'm not going to ask Admiral Insurance (Gibraltar) Limited to do anything differently

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 16 October 2023.

Michelle Henderson  
**Ombudsman**