

The complaint

Mr S complains about Admiral Insurance (Gibraltar) Limited (Admiral) cancelling his motor insurance policy.

Any reference to Admiral in this decision includes their agents.

What happened

Mr S took out a motor insurance policy online with Admiral in November 2019, because he had been stopped by the police earlier in the day for driving without insurance. An IN10 conviction for driving without insurance was added to Mr S's driving licence in June 2020 and Mr S contacted Admiral to tell them about the conviction. Mr S said he didn't think he had to disclose the pending prosecution when he took out the policy, but when he received the conviction (a fine and penalty points on his licence).

Admiral told Mr S they were cancelling his policy because their underwriting criteria wouldn't provide cover for an IN10 conviction. They cancelled the policy with effect from July 2020 and said Mr S should declare the cancellation to any future insurer. They also provided proof of the No Claims Discount (NCD) Mr S was entitled to at the date of cancellation.

Mr S complained to this Service in March 2024. He didn't believe he should have had to declare the cancellation to insurers as he'd been open and honest in declaring his conviction and didn't misrepresent himself or commit any fraud, which were the standard grounds for policy cancellation. Having to declare the cancellation to insurers meant significant financial penalties, as he'd had to pay higher premiums over several years. Admiral cancelled the policy through no fault of his own. He wanted Admiral to remove record of the cancellation, so he wouldn't need to declare it.

As Mr S complained to this Service before Admiral considered his concerns, we asked them to respond to Mr S (he contacted Admiral at the same time to log a complaint). They didn't uphold the complaint, saying in their final response Mr S confirmed they'd addressed his concerns, so they considered the complaint resolved.

Mr S wasn't happy with Admiral's response, so he asked us to investigate his complaint.

Our investigator upheld the complaint, concluding Admiral hadn't acted fairly. The investigator considered whether Mr S made a misrepresentation under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). CIDRA required a consumer to take reasonable care not to make a misrepresentation when taking out an insurance policy. Mr S maintained he thought he didn't need to disclose the pending prosecution when he took out the policy. The investigator didn't think Admiral had provided enough evidence Mr S should reasonably have been aware of the need to disclose the pending prosecution and he told Admiral of the conviction in June 2020.

The underwriting criteria provided by Admiral confirmed they wouldn't offer cover with an IN10 conviction – but didn't indicate cover wouldn't be offered if a prosecution was pending. It was fair for Admiral to cancel the policy once Mr S informed them of the conviction, but the

investigator hadn't seen sufficient evidence Admiral wouldn't have offered cover at the time he took out his policy, had they known about the pending prosecution. So, it wasn't fair for Admiral to treat Mr S not disclosing the pending prosecution when he took out the policy as a qualifying misrepresentation under CIDRA.

The investigator thought Admiral should record the cancellation as being made by Mr S when he notified Admiral of the conviction. Admiral should also remove record of their cancellation from internal and external databases and pay Mr S for the increased premiums he'd had to pay because of the record of the cancellation (if Mr S could evidence he'd disclosed the cancellation to other insurers) together with interest. Admiral should also provide a letter to Mr S confirming they'd cancelled the policy in error, and they'd refunded the difference in premium from the cancellation having been recorded. They should also pay Mr S £100 compensation for distress and inconvenience.

Admiral disagreed with the investigator's view and requested that an Ombudsman review the complaint. They said the length of time since Mr S took out his policy meant they didn't retain the specific questions he was asked (including about pending prosecutions) in the online journey through which he took out his policy. But it would have been the same as that included in the 'Motor Proposal Confirmation' document they'd provided (which did ask about any pending prosecutions). And if he had disclosed the pending prosecution, they would have declined to provide cover.

In my findings, I concluded Admiral didn't need to do anything in settlement of the complaint. From the circumstances of the case I thought it reasonable to conclude Mr S was aware of the pending prosecution when he took out the policy.

While Admiral couldn't provide the specific question Mr S was asked in the online journey through which he took out his policy, I thought it likely it would mirror the question in the Motor Proposal Confirmation, which referred to pending prosecutions. Mr S would also have had the opportunity to see the Confirmation and to correct the answer about convictions and pending prosecutions. And the welcome email from Admiral asked him to check the insurance documents (including Confirmation) and contact them if any details were incorrect.

So, I concluded Mr S should reasonably have been aware of the need to disclose any pending prosecutions, not just convictions. So, under CIDRA, he didn't take reasonable care not to make a misrepresentation. I also concluded Mr S made a qualifying misrepresentation, but it was careless (rather than deliberate or reckless) as I accepted Mr S thought he didn't need to declare any pending prosecutions.

Admiral said had a pending prosecution been disclosed, it would have triggered a 'popup block' when entered, with Mr S being directed to call them. In turn, Admiral would have offered a policy through a sister insurer that would accept IN10 convictions. So, the policy with Admiral would not have been issued. That being the case, I thought it fair and reasonable for Admiral to cancel Mr S's policy when he made them aware of the conviction.

Taking all these points together, my provisional conclusion was that Admiral didn't act unfairly and reasonably in cancelling Mr S's policy in the circumstances of the case. Because I reached different conclusions to our investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

What I've provisionally decided – and why

I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

My role here is to decide if Admiral have acted fairly towards Mr S.

Having reviewed the evidence I don't think Admiral need to do anything in settlement of this complaint. I know this is likely to come as a disappointment to Mr S, but I hope my findings go some way in explaining why I've reached this provisional decision. I've focused my comments on what I think is relevant. If I haven't commented on any specific point it's because I don't believe it's affected what I think is the right outcome.

The key issue in Mr S's complaint is whether Admiral acted fairly in cancelling his policy because of the IN10 conviction. Mr S says he didn't need to declare what was, at the time he took out his policy, a pending prosecution. He says he was open and honest in declaring the subsequent conviction in June 2020. Admiral say they wouldn't have provided cover because of the conviction under their underwriting criteria. They also say the question Mr S would have been asked when he took out the policy would have mirrored that in the Motor Proposal Confirmation issued to Mr S, which did refer to pending prosecutions.

Looking at what happened, from the evidence and information I've seen, Mr S took out his policy later the same day he was stopped by the police for driving without insurance. Which suggests Mr S took out the policy to remedy the position. I also think it reasonable to conclude he would have been aware of the pending prosecution when he took out the policy.

Admiral point to the Motor Proposal Confirmation setting out the information and answers provided by Mr S when he took out his policy. They refer to the following statement:

***"Motoring Offences:** Have you or any driver been involved in any motoring offences in the last 5 years, including fixed penalties, convictions, disqualifications or have any pending prosecutions other than those listed?*

In a table immediately under the question (there are also questions about non-motoring convictions and claims) there is a table which includes a column headed 1) Motoring Offences to which the answer recorded (against a row setting out Mr S's details) is 'None'. I think the question is clear that it includes 'pending prosecutions'. So, in answering 'none' Mr S provided an incorrect answer, as he'd been stopped by the police earlier in the day.

The same document also includes the following statement at the beginning of the first page:

"You must check this document carefully because it is your record of the information you have provided and we have used this to assess the risk we are undertaking. Once you have checked this document, if any information is found to be incorrect, please contact us immediately. Failure to notify us of corrections or changes could mean we do not pay your claim, reduce the amount you are able to claim for or even result in your policy being declared void. You must read this document along with 'Your Car Insurance Guide' at [www.admiral .com](http://www.admiral.com)."

A similar statement is included in the full policy terms and conditions.

While Admiral haven't been able to provide the specific question Mr S would have been asked in the online journey through which he took out his policy, I think it's likely it would mirror the question in the Motor Proposal Confirmation, as that records the answers and information provided in response to the online questions (and is a 'confirmation'). In any event, Mr S would have had the opportunity to see the Motor Proposal Confirmation and to correct the answer about convictions and pending prosecutions. And the welcome email from Admiral when he took out the policy also asked him to check the insurance documents (including the Motor Proposal Confirmation) and contact them if any details were incorrect.

Taking these points together, I think it Mr S should reasonably have been aware of the need to disclose any pending prosecutions, not just convictions. So, under CIDRA, he didn't take reasonable care not to make a misrepresentation.

I've then considered whether, under CIDRA, this was a qualifying misrepresentation. Admiral say their underwriting criteria mean an IN10 conviction would not be acceptable. That is, they wouldn't offer cover if a conviction was disclosed (either on or after the date a quote for insurance was provided). They've provided evidence supporting this position. As Admiral wouldn't have offered the policy with an IN10 conviction, I've concluded Mr S made a qualifying misrepresentation under CIDRA. But I think the misrepresentation was careless (rather than deliberate or reckless) as I accept Mr S thought he didn't need to declare any pending prosecutions. That would be consistent with Admiral refunding the unused period of cover when they cancelled the policy.

I've also considered whether it's reasonable to conclude the criteria would extend to pending prosecutions, as well as convictions. While the criteria do not explicitly state this. Admiral have said that had a pending prosecution been disclosed, it would have triggered a 'pop-up block' when entered, with Mr S being directed to call them. In turn, Admiral would have offered a policy through a sister insurer that would accept IN10 convictions. So, the policy with Admiral would not have been issued.

That being the case, I think it was fair and reasonable for Admiral to cancel Mr S's policy when he made them aware of the conviction. The policy terms and conditions provide for Admiral cancelling a policy if a policyholder doesn't comply with the General Conditions, one of which is that the information in the Motor Proposal Confirmation is true and complete.

I recognise what Mr S says about being open and honest in declaring the conviction, but it doesn't change my conclusion he should reasonably have been aware of the need to disclose the pending prosecution when he took out the policy.

Taking all these points together, my provisional conclusion is that Admiral didn't act unfairly and reasonably in cancelling Mr S's policy in the circumstances of this case. So, I won't be asking them to take any further action.

My provisional decision

For the reasons set out above, my provisional decision is that I don't uphold Mr S's complaint.

Neither Mr S nor Admiral responded to the provisional decision by the date requested.

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.

My role here is to decide whether Admiral acted fairly towards Mr S.

As neither Mr C nor Admiral responded to the provisional decision, then my final decision remains the same as my provisional decision, for the reasons set out in my provisional decision.

My final decision

For the reasons set out above, my final decision is that I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 January 2025.

Paul King
Ombudsman