complaint

Mr C has complained about Admiral Insurance Company Limited's decision to reject a claim and cancel his car insurance policy as if it didn't exist. Mr C is being represented by a solicitor in his complaint.

background

In October 2017 Mr C bought a car insurance policy with Admiral. In March 2018 his car was stolen and so he made a claim. While investigating, Admiral discovered that Mr C's car had been modified before he bought it. Mr C hadn't told Admiral about the modifications when he called Admiral to insure the car. It said if it had known about them, Admiral wouldn't have offered Mr C insurance. So Admiral rejected Mr C's claim as it cancelled his policy as if it didn't exist – also known as avoidance.

Our investigator thought Admiral had acted reasonably. Mr C's representative doesn't agree. So they'd like an ombudsman to decide.

my findings

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

Where a complaint arises from non-disclosure of information important to an insurer, we look to see that it asked a clear question when the policy was taken out. We check that the information given would affect whether a policy was offered or its terms. And we check whether the policyholder has taken reasonable care to provide accurate information. If not, we consider whether they did so deliberately, recklessly or carelessly. Admiral said Mr C carelessly misrepresented the facts when he bought his policy. It has placed reliance on the terms of the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) and I have taken account of the Act.'

Mr C called Admiral to insure his car in October 2017. Admiral told Mr C it couldn't insure his car as it was showing as a light commercial vehicle. Mr C told Admiral this wasn't correct and that it had been incorrectly registered as such – but the correct car was a standard version of the model.

Mr C's solicitor says that Mr C only referred to the registration and model of the car when he said it was a standard model. They said he wasn't referring to the modifications. They said that Admiral only said that the policy might be avoided if it was later found that the vehicle was a light commercial vehicle as Admiral couldn't insure that.

The agent asked Mr C if his car had any modifications. Mr C said no – but then said the car had a roof rack. Admiral was able to insure the standard version of Mr C's car with the modification of a roof rack.

When Admiral received the purchase invoice for the car following the theft, it discovered that in addition to the roof rack, there were over 20 other modifications listed on the purchase invoice, of which several were described as 'bespoke' and included an engine upgrade, body kits, alloy wheels and 'satnav' The purchase invoice was dated less than a month before Mr C called Admiral to buy the policy.

So I think Mr C was reasonably aware when he answered Admiral's question about modifications – given the time lapse – that his car had been modified extensively. Mr C said he wrongly assumed he only needed to tell Admiral about the roof rack as the other modifications already existed on the car. But Admiral asked Mr C if his car had any modifications. So I think Admiral's question was clear but Mr C didn't take reasonable care when he answered it. I therefore think its decision to avoid Mr C's policy for careless misrepresentation was fair and reasonable.

One of the modifications was to the engine power. The garage which Mr C bought the car from provided a letter after the theft to say it didn't upgrade the engine. Admiral didn't accept this as suitable evidence - as the purchase invoice clearly listed it as a modification which Mr C paid for. Mr C's solicitor has asked what further evidence we need as it's provided evidence the engine wasn't upgraded. The car was stolen and not recovered, so it's impossible to check whether the engine was upgraded or not. So I think Admiral's decision to disregard the letter and place more weight on the purchase invoice as evidence that the engine was upgraded, which Mr C paid for in September 2017, was reasonable.

Admiral's policy describes modifications as:

> *"Any changes to your car's standard specification, including accessories and additional parts; optional extras and after market alterations, trade related changes and parts. These include, but are not restricted to, cosmetic and/or performance changes or changes related to your business or profession."*

Mr C's policy schedule reads the following underneath the 'modifications' section:

> *"anything which changes the maker's standard specification or alters its performance, including alloy wheels, body kits, or any non standard parts. If you have any queries, please call us."*

So I think Admiral gave Mr C a further opportunity to contact Admiral when he received his policy documents to tell it about the modifications to his car. But he didn't. Admiral explained that if any of the information Mr C gave was incorrect, he may not have the protection of the policy.

Where the misrepresentation has been careless rather than deliberate or reckless – but the insurer would have otherwise provided cover at a higher premium - an insurer should provide cover and either charge a higher premium and/or reduce the amount of the claim proportionately to the premium already paid. But where an insurer wouldn't have offered a policy, the insurer may cancel the policy as if it didn't exist. But it should provide a refund of premium to the customer – if it hasn't already met a claim.

An insurer's underwriting criteria is commercially sensitive and so Admiral doesn't have to share it with customers. But we can ask an insurer to provide evidence to us so that we can check it's applied its criteria correctly and treated its customer fairly. Admiral has provided underwriting evidence to show that it wouldn't have offered Mr C a policy if he'd told it about the modifications to his car.

I understand Mr C and his representative will be disappointed with my decision But based on everything I've seen, I think Admiral's decision to cancel the policy as if it didn't exist was reasonable and in line with CIDRA. This means I don't think it should meet Mr C's theft claim.

my final decision

My final decision is that I don't uphold this complaint, save for Admiral to refund the premium if it hasn't already done so and pay interest at a simple rate of 8% a year from the date of its cancellation decision to the date it pays the refund to Mr C.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C's representative on behalf of Mr C to accept or reject my decision before 4 December 2019.

Geraldine Newbold
ombudsman