

The complaint

Mr O complains that Aviva Insurance Limited unfairly avoided his motor insurance policy.

What happened

Mr O bought a short term car insurance policy with Aviva in January 2018. He was involved in an accident in February 2018 and made a claim on his insurance.

Aviva investigated the claim. It found that Mr O wasn't registered at the address he gave on his insurance application. It decided Mr O had deliberately misrepresented his address, so it avoided his policy and retained his premiums.

Mr O didn't complain about this at the time. However, in March 2021 Aviva contacted Mr O. It told him he owed Aviva just under £10,000 relating to claims by the third parties involved in the February 2018 accident. Aviva said it was entitled to ask him to reimburse the costs it had incurred.

Mr O was incredibly distressed by this and brought his complaint to this service. He wants Aviva to settle his February 2018 claim and pay compensation for the stress it caused him.

Our investigator recommended that Mr O's complaint should be upheld. She thought Mr O's misrepresentation was careless, rather than deliberate. She also thought this wouldn't have stopped Aviva insuring Mr O. As a result, she didn't think Aviva had acted reasonably by avoiding the policy. She asked Aviva to settle Mr O's 2018 claim in line with the policy terms.

Aviva disagreed with our investigator, so the case was passed to me to consider.

My provisional decision

I issued a provisional decision on this complaint on 7 March 2022. I said:

"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.

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 must 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 several 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.

Aviva says "the policy address was deliberately misrepresented" and this misrepresentation was "deliberate or reckless". Under CIDRA, this meant it could avoid Mr O's policy. I've got to decide if this was a reasonable thing for Aviva to do.

The first thing for me to decide is: was there a misrepresentation? I've thought about this very carefully and I'm not persuaded there was.

Mr O took out the policy online via an insurance intermediary. We asked Aviva to show us exactly what questions Mr O was asked when he bought his policy. Aviva didn't provide this. Instead, it told us:

"[The intermediary's] policies are usually taken out by drivers who are borrowing a vehicle from a friend or relative, or looking to insure a recently-purchased vehicle and can range between 1-28 days of cover. Due to the nature of such cover, it is expected that customers enter their current address when applying and no checks are done at this stage." [my emphasis]

Mr O told Aviva he'd been living with a friend since July 2017. He said he couldn't provide proof of address because:

- *His friend held the tenancy.*
- *He was unemployed so didn't have a current payslip.*
- *He wasn't claiming Job Seeker's Allowance.*
- *His postal address was still his parents' address.*

However, Mr O's previous employment contract and most recent payslip – from September 2017, four months before the accident – both showed his friend's address. So I don't think there's any doubt that Mr O had recently lived there.

Mr O was moving around with short term addresses, so I understand why he'd give his parents' address to anyone who needed it. This would ensure he received any important postal correspondence rather than risk it not being received. And given the short-term nature of his living arrangements, and the fact he wasn't renting a place under his own name, I don't find it particularly strange that Mr O hadn't changed the address on his driving licence or V5 form – the documents Aviva relied on to argue Mr O provided the wrong address.

Aviva appears to suggest Mr O should have put his parents' address on his application. But I don't think this would have been right when he was living – and driving – in a completely different part of the country during the month of cover. Indeed, this would have been misleading because his insurance would have been assessed on an incorrect risk. And I think Aviva might reasonably have made the same argument in the event of a claim if he'd done this – that he wasn't living with his parents so had misrepresented his address. The same argument can't be true in both situations.

If the intermediary's online portal asked Mr O to provide his "current address", as Aviva told us, I think it's entirely understandable that Mr O gave his friend's address. I think a reasonable consumer would have done the same. And I think this particularly relevant given the policy was only for a month. So I don't think Mr O made a misrepresentation because I think he answered the question about his "current address" correctly.

I think it's worth making one other comment about this. Even if I agreed with Aviva that Mr O had made a misrepresentation, I'd have to decide whether this was a qualifying misrepresentation under CIDRA. If it wasn't, Aviva can't take any action, even if the information Mr O gave was wrong.

To do this I first have to answer a simple question: did the customer take reasonable care when giving they gave answer they did? And I think Mr O did take reasonable care for exactly the same reasons I set out above. I think he answered the question about his current address honestly and I don't see what other answer he should have given. This means there isn't a qualifying misrepresentation under CIDRA, and Aviva can't avoid his policy.

For the reasons above, I don't think it was reasonable for Aviva to avoid Mr O's policy. Subject to any responses I get to this provisional decision, I think Aviva should settle the claim in line with the policy terms. And as I don't think the policy can be avoided, I don't think Aviva can ask Mr O to repay its costs.

Mr O told us he sold the car soon after the accident. I've seen no information about the damage caused by the accident or how much Mr O sold it for. I'm also conscious that Aviva didn't have the chance to inspect it before Mr O sold it. So I recognise that settlement isn't straightforward here.

However, I think the fairest way for Aviva to settle the claim would be for it to use the information it has to value Mr O's car at the date of the accident, ask Mr O to provide evidence of how much he sold the car for, and pay him the difference. It should add interest to this settlement amount from the date it initially rejected his claim.

Finally, I think Aviva's actions have caused Mr O some distress: first, by its original decision to avoid the policy in 2018; second, by threatening legal action to recover its costs three years later. I think it should pay him £200 to reflect this."

Responses to my provisional decision

Aviva didn't agree with my provisional decision. It says, in summary:

- Mr O didn't meet the policy terms, so it avoided the policy.
- It gave Mr O the chance to prove his address but he couldn't do this.
- It wouldn't have rejected his claim if he'd given his parents' address. For this type of policy, the customer should provide their "*permanent*" address even if he was living temporarily in a different part of the country.
- Mr O took out six policies between November 2017 and February 2018 using his friend's address.

Mr O doesn't think my proposed award of £200 adequately reflects his loss. He says, in summary:

- He sold his car to a third party company for just under £700. He sent us a copy of a bank statement showing this. He also told us he was trying to get an invoice showing how much he paid for the car in December 2017.
- He paid a tow company "*almost £200*" to transport his car to the buying company.
- He was unable to find affordable insurance after Aviva avoided his policy.
- This meant he had "*no option but to rent cars [at] very high prices*".
- This also meant he couldn't build up a no claims discount over the past four years.
- He suffered an increased financial burden and stress because of Aviva's actions. This affected his quality of living.
- He has lost faith in consumer protection and wants to deter Aviva from treating other customers unfairly.

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.

I understand Aviva's arguments, but it still hasn't provided any evidence to show why this was a misrepresentation under CIDRA – the reason it avoided Mr O's policy. Aviva has

simply repeated its position that Mr O should have given his permanent address, which it says should have been his parents' address.

But as I set out in my provisional decision, the key issue under CIDRA is to look at the questions Mr O was asked – and the answers he gave – when he bought the policy. And Aviva hasn't shown that Mr O's answer to the question he was asked about his "*current*" address was wrong.

I also don't see how Aviva's statement that Mr O took out six policies using his friend's address helps it. This just confirms that Mr O was living with his friend and using that address for his car insurance over several months. I set out the reasons why he couldn't provide proof of this address in my provisional decision.

So Aviva hasn't provided any new evidence that changes my decision.

On the other hand, Mr O believes my proposed award isn't enough. I understand his points. However, if he was so seriously affected by Aviva's decision to avoid his policy I might reasonably have expected him to complain about this long before now. His complaint was prompted by Aviva's attempts to recover its costs, not for the losses he's now set out. I'm satisfied that my proposed redress – to compensate Mr O for the financial loss he suffered by selling his damaged car below market value, and for the distress Aviva caused him in March 2018 when it declined his claim and cancelled his policy – is fair.

For the reasons above, I see no reason to change my provisional findings.

My final decision

My final decision is that I uphold the complaint for the reasons set out in my provisional decision. I require Aviva Insurance Limited to:

- Settle Mr O's claim by paying him the difference between the market value of his car and the amount he sold it for.
- Add interest to this amount at 8% a year simple from 16 March 2018 to the date of settlement.
- Stop its claim for costs against Mr O.
- Pay Mr O £200 for the distress it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 19 April 2022.

Simon Begley
Ombudsman