

The complaint

Mr K complains that Aviva Insurance Limited mishandled his claim on a motor insurance policy.

What happened

Mr K was a director of a company. The company acquired a sports utility vehicle.

For the year from late January 2021, Mr K took out an Aviva policy for the car. The policyholder was Mr K rather than his company. Mr K's wife was a named driver. The cost of the policy was about £800.00, payable by instalments.

For the year from late January 2022, Mr K renewed the policy. The cost was about £860.00, payable by instalments.

In mid-May 2022, Mr K reported to Aviva that the car had suffered fire damage. Mr K made a claim on the policy.

In early September 2022, Aviva declined the claim. It treated the policy as void from January 2021, saying that Mr K had made misrepresentations when he took out the policy.

In mid-November 2022, Mr K complained, through us, to Aviva that it should meet the claim. By a final response dated early January 2023, Aviva turned down the complaint.

Mr K asked us to investigate.

Our investigator recommended that the complaint should be upheld in part. She referred to Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). She thought that Aviva had acted fairly by voiding the policy. However, she thought it unfair that Aviva hadn't refunded Mr K's premiums. She recommended that Aviva should do so.

Aviva agreed with the investigator's opinion. It said it had refunded all premiums to Mr K. Mr K disagreed with the investigator's opinion. He asked for an ombudsman to review the complaint.

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.

CIDRA imposes a duty on a consumer to take reasonable care not to make a misrepresentation to an insurer when taking out or changing a policy.

From Aviva's file, I find that – when he took out the policy- Aviva asked Mr K if he or his spouse was the registered keeper of the car. He answered in the affirmative.

But the V5 vehicle registration document showed that Mr K's company was the registered keeper of the car. Mr K ought reasonably to have known that. So his answer was incorrect. I consider that he made a misrepresentation that was careless or worse.

From Aviva's file, I find that – when he took out the policy- Aviva asked Mr K if he or his spouse was the legal owner of the car. He answered in the affirmative.

But Mr K has told us that he'd bought the car through his company and on finance. So Mr K ought reasonably to have known that his company or the finance company, rather than he or his spouse, was the legal owner of the car. So his answer was incorrect. I consider that he made another misrepresentation that was careless or worse.

I've thought about whether the misrepresentations made any difference to Aviva. I accept its underwriting evidence that it wouldn't have issued a policy to Mr K if he hadn't incorrectly said he or his spouse was the registered keeper and legal owner. So I find that the misrepresentations made the difference between Aviva declining cover or offering it. I consider that Mr K made qualifying misrepresentations under CIDRA.

So CIDRA gave Aviva certain remedies including treating the policy as void from the start and declining any claim. I don't consider that Aviva treated Mr K unfairly by exercising those remedies.

However, I've thought about whether the misrepresentations were careless or whether they were worse - reckless as to the truth or deliberate. I've concluded that Mr K carelessly failed to distinguish between himself and his company. So I don't think he made the misrepresentations recklessly or deliberately.

CIDRA only gave Aviva the further remedy of retaining the premiums if the misrepresentations were reckless or deliberate. I've found the misrepresentations were merely careless. So I don't consider that Aviva treated Mr K fairly by keeping the premium Mr K had paid for the year from January 2021 and whatever instalments he'd paid towards the premium for the year from January 2022. (I find it likely that Mr K stopped paying instalments after about September 2022).

Putting things right

So I've thought about directing Aviva to refund the amounts Mr K had paid in premium. Aviva accepted the investigator's opinion and told us it had made the refund. Mr K hasn't confirmed or denied that.

I've also thought about directing Aviva to pay interest on the amount of its refund. However, I consider that Mr K's misrepresentations were responsible for bringing trouble on himself. Also, he will have had the benefit of a year of free insurance in 2021. So I don't find it fair and reasonable to direct Aviva to pay him interest.

Overall, I find it fair and reasonable to direct Aviva (insofar as it hasn't already done so) to refund Mr K the amount he paid it for insurance premiums for the years from January 2021 and January 2022.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Aviva Insurance Limited (insofar as it hasn't already done so) to refund Mr K the

amount he paid it for insurance premiums for the years from January 2021 and January 2022.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 24 July 2023.

Christopher Gilbert

Ombudsman