

The complaint

Ms A complains that Aviva Insurance Limited trading as Quotemehappy.com (Aviva) cancelled her motor insurance policy because it said she had provided incorrect information.

References to Aviva include other organisations and individuals acting on its behalf.

What happened

Ms A had motor insurance with Aviva. She had insured a number of different cars on the policy. Aviva asked her for a copy of the V5 registration document for one of the cars, which I will call Car A, and proof she was the legal owner and registered keeper of other cars she had insured. The V5 showed that Car A was owned by and registered to her brother, when Ms A had said her parents were the legal owners and registered keepers when insuring it. Aviva said Ms A also subsequently insured another car on the policy, which I will call Car B, saying that her parents were the legal owners and registered keepers when it was owned by and registered to her sister. Aviva voided the policy from the date Ms A first insured Car A, so it was as if the policy didn't exist from that date.

Ms A wasn't happy about this and complained to Aviva. Aviva said:

"The policy was reviewed by [Aviva] Policy Investigation Unit and a decision was made to cancel your policy from [date]. After investigating this matter, I agree the correct decision was made. Following a full investigation, the owner and registered keeper of your vehicle has been misrepresented since [date].

*[Aviva] team would have been within their rights to retain all monies paid, but on this occasion a refund of £555.02 was processed back to your account ending [****]. I have read your emails pleading your case but as you are aware the decision stands with cancellation.*

In view of the voidance of this policy, we must advise that we will not be prepared to offer you insurance cover in the future. Please do not incept any further general insurance policies with any Aviva Group company (either via our internet websites or by telephone) or with any Aviva authorised Insurance Broker as any such policy will be considered void from inception and you will be reported to the Motor Insurance Database as an uninsured driver.

We must advise you that the voidance of this policy must be disclosed to any other current or future insurers. We also confirm that your details may be loaded on to fraud databases and we may share details of this matter with fraud prevention agencies."

Ms A wasn't happy with Aviva's response and complained to this service. Our investigator didn't uphold her complaint. She said Aviva had acted fairly and in accordance with the terms and conditions of Ms A's policy.

Ms A wasn't happy with what the investigator said and so her complaint has been passed to me. Ms A wants Aviva to change its decision.

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 don't uphold Ms A's complaint. I'll explain why.

When this service looks into this kind of complaint we consider the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), as we normally find this produces a fair and reasonable outcome.

CIDRA says a consumer needs to take reasonable care not to make a misrepresentation when taking out an insurance policy. It says if a consumer doesn't do this the insurer can take certain actions as long as the misrepresentation is a qualifying one.

So I've considered whether I think Ms A took reasonable care not to make a misrepresentation, whether any misrepresentation was a qualifying one and whether the action Aviva took was in line with CIDRA.

To do this, we first look at the information provided by the consumer and decide whether it was a correct statement of fact, an incorrect (or incomplete) statement of fact, or a statement of opinion. It's for the insurer to prove that the information was incorrect or incomplete.

I will in the main consider Car A, as it is in relation to this vehicle that Aviva has been able to provide the most evidence. Aviva has shown this service proof that Ms A said that her parents were the legal owners and registered keepers of Car A, but that in fact the V5 shows it was registered to her brother.

So I think there was a misrepresentation as the information about the registered keeper wasn't correct.

The next thing to consider is whether it was a qualifying misrepresentation.

Under CIDRA there are two main factors to take into account to decide whether there's been a qualifying misrepresentation:

- Did the consumer take reasonable care not to make a misrepresentation ?
- Has the insurer shown that without the misrepresentation they wouldn't have entered into the contract (provided the policy) at all, or would have only done so on different terms ?

The test for whether or not the consumer took reasonable care is set out in CIDRA. The standard of care required is that of a "reasonable consumer". This means we need to consider what a reasonable consumer would have done in the circumstances. The onus is on the insurer to ensure that information is obtained through clear questions put to the consumer. And the onus is on the consumer to take reasonable care not to make a misrepresentation when answering those questions. Consumers are only expected to answer questions to the best of their knowledge and belief, but if a consumer is unsure of the answer to a question, it's reasonable to expect them to find out.

I think that Aviva's questions about who was the legal owner and registered keeper were clear and specific. And I've seen the policy documents for the car in question which clearly state "parent" as the legal owner and registered keeper. I've also seen a copy of the V5 in a man's name, which Ms A doesn't dispute is in fact her brother.

Ms A says she thought the car did belong to her parents and in any event most of the fields were auto filled when she changed the car on the policy, but I think she had a responsibility to ensure that the answers she gave were correct, and if she wasn't sure she could have checked the V5.

So I don't think that Ms A did take reasonable care not to make a misrepresentation when answering the questions about who was the legal owner and registered keeper of Car A.

Aviva has shown this service proof that if Ms A had clicked "OTHER" to the questions who was the legal owner and registered keeper, which would have been the correct option to choose, the policy would have been declined at the quote stage and she wouldn't have been able to take out any insurance.

The remedy available to the insurer is different if a misrepresentation was careless or deliberate/reckless and it's for the insurer to show that a qualifying misrepresentation is deliberate/reckless. If it's not deliberate/reckless a qualifying misrepresentation will be taken to be careless.

CIDRA sets out that if the qualifying misrepresentation was deliberate/reckless, the insurer can avoid the policy and refuse all claims and need not return the premium, unless it would be unfair to the consumer to retain them.

If the qualifying misrepresentation was careless, and the insurer wouldn't have provided the insurance on any terms, it may avoid the policy and refuse all claims, but it must return the premium. This means the policy will be cancelled from the start and it will be as if it never existed.

Aviva decided the misrepresentation was reckless/deliberate. A qualifying misrepresentation will be deliberate/reckless if the consumer:

- knew the information they provided was untrue or misleading or did not care whether it was untrue or misleading; and
- knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.

Aviva has provided this service with a summary of the changes made to Ms A's policy. Aviva said its records showed that, in addition to the changes Ms A successfully made to her policy, she requested several more quotes for changes which were not completed. This included a number of quotes which Aviva declined because Ms A said she wasn't the registered keeper or legal owner of the car. For example, a short while after changing the car on the policy to Car B, Ms A tried to change it back to Car A. Aviva declined the request to insure Car A because Ms A responded "OTHER" when asked who the registered keeper and owner was. Aviva said a few minutes later Ms A updated the quote details to say her parents were the registered keepers and owners of the car and cover was accepted on this basis.

I think Aviva has provided information to suggest that Ms A changed her answers to the questions about who the legal owner and registered keeper of Car A was in order to get the cover. So on balance I'm satisfied that she either knew the information she provided to get the cover for Car A was untrue or misleading or didn't care whether it was untrue or misleading; and that she knew that the matter to which the misrepresentation related was relevant to the insurer, or didn't care whether or not it was relevant to the insurer.

So I think Aviva's decision that Ms A made a qualifying misrepresentation was fair and reasonable. And I think Aviva acted fairly and reasonably by treating the misrepresentation

as deliberate/reckless. Aviva avoided Ms A's policy and refunded some of her premiums. This means the actions Aviva took are more generous than required by CIDRA.

My final decision

For the reasons given above I don't uphold Ms A's complaint. So I won't be asking Aviva Insurance Limited trading as Quotemehappy.com to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 31 January 2025.

Sarah Baalham
Ombudsman