

The complaint

Mr M complains that Aviva Insurance Limited avoided his motorbike insurance policy (treated it like it never existed).

The insurer of Mr M's policy is Aviva. All reference in my decision to Aviva includes agents acting on its behalf.

What happened

Mr M took out a motorbike insurance policy with Aviva Insurance through an online comparison website.

By way of background, around a week before, Mr M bought a motorbike insurance policy through a different broker, but with the same insurer Aviva. Mr M failed the validation checks as his documents showed he lived at a different address to the one he'd given. Mr M said he kept the bike at a different address, the one he gave, overnight. For ease, I'll refer to the bike location address he gave as 'S' and Mr M's address as 'E'.

For the previous policy, the agent on behalf of Aviva said that the discrepancy meant the extra premium Mr M would need to pay for cover would be over £800. Mr M decided not to pay the higher premium and cancelled the policy.

Later on the same day, Mr M bought this policy online through a comparison website, which was branded under a different name, but the insurer was also Aviva.

Aviva said Mr M answered the questions it asked about his home address, if his home address is where the bike is kept overnight, incorrectly. He gave the address for both questions as 'S' but his home address is 'E'. Aviva considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid the policy and keep the premiums. But it returned the premium to Mr M.

Mr M was unhappy with Aviva's decision. But Aviva didn't uphold his complaint. So Mr M asked us to look at his complaint.

One of our Investigators didn't recommend the complaint should be upheld. He found Aviva had acted reasonably and in line with the relevant law for disclosure when applying for an insurance contract. He found the fact Mr M had looked for several quotes for both addresses before buying the policy, along with the timeline of events, persuasive enough to support Aviva's decision to avoid the policy for deliberate and reckless misrepresentation.

Mr M didn't agree and wants an ombudsman to decide. In summary he says he understood he should give the address where the bike was being kept overnight as the risk address, which is why he put address 'S' and not address 'E' where he was living.

He says if he intended to deliberately misrepresent to Aviva, he wouldn't have provided validation documents for address 'E' under the previous policy. So he doesn't agree with the classification of the misrepresentation as deliberate or reckless.

Mr M accepts he carried out several quotes for both addresses. He says this was part of researching for comparison and exploration. Mr M says these were carried out before he was directed to the broker website and finalised his purchase for this policy.

Mr M is unhappy that the agent acting on behalf of Aviva incorrectly said Aviva had cancelled the previous policy, when it was Mr M who had cancelled it. While he's pleased the agent acknowledged this error, Mr M believes the error has had a significant impact on his ability to obtain insurance in future.

So the case has been passed to me to decide.

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.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) 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.

And 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 has to 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 a number of 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 Mr M failed to take reasonable care not to make a misrepresentation when he answered the following questions:

"What is your home address?" Mr M answered 'S' when he lived at 'E'.

And;

"Is the vehicle kept at your home address overnight?" Mr M answered, 'yes' but his home address is 'E' and not 'S' as he'd wrongly declared.

I think the questions asked of Mr M were clear which he didn't take reasonable care to answer.

Aviva has provided its underwriting criteria to show that had it known Mr M kept his bike at a different address to his home address, it wouldn't have offered cover.

Aviva's underwriting evidence is commercially sensitive information so I cannot share it with Mr M. But I'm satisfied from the information provided by Aviva that it treated Mr M as it would any other customer in the same circumstances.

This means I'm satisfied Mr M's misrepresentation was a qualifying one.

Aviva has said Mr M's misrepresentation was deliberate or reckless because he knew that his motorbike wasn't being kept at his home address overnight. And Mr M obtained several

quotes using both addresses for comparison – showing prices – before deciding to buy the policy using a different address to his home address. The address Mr M used produced a much lower premium than his home address.

I don't find Mr M's reasons for obtaining multiple quotes using both addresses plausible. Mr M went on to provide incorrect answers to two clear questions about his home address and where the bike was being kept overnight (being the same as his home address) for a much lower premium, in order to obtain this policy.

Under CIDRA, it is the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer. And the FCA says under CIDRA that a qualifying misrepresentation is deliberate or reckless if the consumer—

(a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and

(b) 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

In light of the above, I'm satisfied that Aviva has correctly classified the misrepresentation as deliberate or reckless. I find from the information available that on the balance of probabilities, Mr M knew the answers he gave were untrue or misleading, and knew the matter was relevant to the insurer, in light of the reason why he very recently decided to cancel his previous policy.

As I'm satisfied Mr M's misrepresentation should be treated as deliberate or reckless, I've looked at the actions Aviva can take in accordance with CIDRA.

Aviva avoided Mr M's policy. In line with CIDRA, it could keep the premium Mr M had paid. But it provided a more favourable outcome to Mr M and refunded the premium he'd paid.

Mr M believes Aviva's error in saying it cancelled the previous policy will impact his ability to obtain future insurance. But it is the avoidance of the second policy which Mr M will need to disclose in order to obtain insurance in future. The error in confirming who cancelled the first policy doesn't change this.

I'm satisfied Aviva was entitled to avoid Mr M's policy in accordance with CIDRA. As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Aviva to rely on it to avoid Mr M's policy produces the fair and reasonable outcome in this complaint.

My final decision

For the reasons set out above, I've decided not to uphold Mr M's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 February 2025.

Geraldine Newbold
Ombudsman