

The complaint

Mr D complains that Aviva Insurance Limited ('Aviva') voided his motorcycle insurance policies and retained his premiums.

What happened

Mr D took out a motorcycle insurance policy with Aviva via a broker in September 2024. During the policy validation process, Aviva identified that Mr D hadn't disclosed a claim from 2023. And further checks showed that he had two previous policies with another insurer that had been previously cancelled.

Aviva said if they had been told about the previous claim and cancelled policies, they wouldn't have offered him cover at all, so they avoided the policy and retained the premiums paid. Aviva wrote to Mr D in October 2024, and they said their decision to void the policy was based on a deliberate or reckless non-disclosure of information, which was done in order to obtain an insurance policy. They said this remedy was set out in the relevant law, the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA').

Mr D then set up another policy with Aviva in December 2024, but the policy was flagged, and further checks showed Mr D had once again not disclosed his previous claims or policy cancellations – including the most recent one from October 2024. Aviva said the decision was made again to avoid the policy and they retained the premium paid under CIDRA.

Mr D raised a complaint to Aviva and said it was unfair for them to retain his premiums paid for the policies. Aviva considered the complaint but didn't uphold it – they said they were justified in the decision they had taken, and their actions were in line with the relevant law. Mr D remained unhappy with Aviva's response, so he brought the complaint to this Service.

After considering what had happened, I wrote to both parties and said that I wasn't minded to uphold the complaint as I didn't think Aviva had acted unfairly. I said I was satisfied Aviva had shown Mr D had made qualifying deliberate or reckless misrepresentations, and so they were entitled to avoid the policies and retain the premiums paid under CIDRA.

Aviva didn't provide anything further for me to consider. But Mr D replied and disagreed - he said he was unhappy he had paid for policies that he hadn't received anything for. As such, I explained I would proceed to issue a final decision on 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.

The relevant law in this case is CIDRA, which requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance policy. The standard of care is that of a reasonable consumer.

If a consumer fails to take reasonable care, and does make a misrepresentation, 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 they 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 for a qualifying misrepresentation under CIDRA depends on whether it was deliberate or reckless, or careless.

When Mr D took out the policies with Aviva, he was asked a series of questions. The two relevant to this complaint are whether he'd made any previous insurance claims, and whether he'd ever had an insurance policy cancelled. Aviva says that Mr D didn't correctly answer these questions when asked at application. And as I think the principles set out in CIDRA are relevant and it's fair and reasonable to apply these principles to the circumstances of Mr D's claim, that means I need to first consider whether Mr D took reasonable care not to make a misrepresentation when he took out the policies.

When considering whether a consumer has taken reasonable care, I need to decide whether the questions they were asked were clear. Having looked at the questions asked, I'm satisfied they were clear enough to prompt a reasonable consumer to understand what Aviva wanted to know. In relation to previous claims, Mr D was asked: *"Have you or any person who may drive been involved in any accident, claim or loss ...irrespective of blame, during the past three years?"*. Mr D did not disclose any claims when he took out the policy, but Aviva identified a claim from 2023 during their validation process.

The test under CIDRA as to whether Mr D took reasonable care is one of a reasonable consumer, not one unique to Mr D. This means I must consider what a reasonable person would have answered when asked the question he was asked. And overall, I think a reasonable consumer would understand that this question was prompting them to disclose any previous claims. The second question Mr D was asked said: *"Have you ever been declined or refused any type of insurance or had any special term imposed?"*

Mr D answered 'no' to this question. However, Aviva said further checks identified that Mr D had two previous policies with another insurer that were cancelled. Additionally, when he took out a second policy with Aviva in December 2024, which was after Mr D had been told the first policy had been voided due to misrepresentation, he once again didn't disclose the previous claim or the cancellations.

I think a reasonable consumer would understand that the question asked about cancellations required them to disclose previous policies which had been cancelled. And given Mr D had previous policies cancelled, as well as the fact that Aviva had previously cancelled a policy just two months before Mr D then took out another policy, I'm satisfied overall that Aviva has demonstrated there were misrepresentations when Mr D took out the policies by answering the questions incorrectly.

Aviva have provided evidence which shows that, if they had known about the previous claim, as well as the previously cancelled policies, they wouldn't have provided cover at all, as it's not within their risk appetite to provide cover in these circumstances. Having considered this evidence, I'm satisfied it shows the misrepresentations were qualifying under CIDRA. So, I think Aviva is reasonably entitled to apply the relevant remedy available to them.

Aviva have classed Mr D's misrepresentations as deliberate or reckless. And under CIDRA, this means they're entitled to avoid the policy, refuse any claims, and retain the premiums

paid. CIDRA says that it is for the insurer to show that a qualifying misrepresentation was deliberate or reckless.

In respect of the first policy, Aviva says this is demonstrated by Mr D not disclosing the claim and previous cancellations, as he would have known this had an impact on insurance coverage as he had previously had two policies cancelled for the same reason. And in relation to the second policy from December, Aviva says Mr D would have been aware he needed to disclose the voidance Aviva had informed him about in October 2024, given they voided his previous policy for the same reason.

Based on the evidence I've seen; I think that Aviva treating the misrepresentations as deliberate or reckless was a reasonable position for them to take, given Mr D would have been aware of his need to disclose relevant information and that this was very important information that Aviva based their underwriting decisions on. It follows that I'm satisfied they are entitled to retain the premiums paid for those policies.

I understand that Mr D says he didn't tell Aviva about the voidance during the December 2024 application as he said he wanted to check whether they would retain his premiums again in full. Mr D said he felt this was evidence of fraud on Aviva's part. But it's important to note that the remedy under CIDRA Aviva applied allowed them to retain any premiums that had actually been paid. So, as Mr D had paid his premiums in full the first policy that was voided, this allowed Aviva to keep all of those premiums, in line with CIDRA.

However, the second policy Mr D took out was set up with a direct debit, so the full premium wasn't paid at the outset. And this means Aviva only retained what had actually been paid at that time. So, while I understand Mr D has asked for his premiums to be refunded, as Aviva have done what they are entitled to do under CIDRA for a qualifying misrepresentation, I see no reason to interfere with this decision.

As CIDRA reflects this Service's long-established approach to misrepresentation cases, I find that allowing Aviva to rely on it to avoid Mr D's policies produces a fair and reasonable outcome in this complaint.

My final decision

For the reasons given above it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 28 February 2025.

Stephen Howard
Ombudsman