DRN-5373752

The complaint

C is a limited company. It's been represented for the complaint by its director - 'D'. As D's actions are central to the matter, I've frequently referred to her. D's been represented at points for the complaint. For ease of reading, in places I've referred to the comments of the representative as being D's own.

C complains Aviva Insurance Limited unfairly avoided its mini fleet motor insurance policy.

What happened

In October 2023 C took out, via a broker, an Aviva mini fleet motor insurance policy.

In August 2024 Aviva avoided the policy (treating as though it had never existed) from mid-October 2023. It said there had been a deliberate or reckless misrepresentation. County Court Judgments (CCJs) against D hadn't been declared when the policy was taken out.

C complained about that decision. D said she hadn't been aware of the CCJ's when taking out the policy. She hadn't received legal notices, as she hadn't been living at her home address in the summer of 2023. She asked Aviva to reinstate the cover so C could continue with its business.

Aviva didn't reinstate the policy, but refunded the premiums paid - £5,345. Unsatisfied with that outcome C referred its complaint to the Financial Ombudsman Service. D said she hadn't been aware of the CCJs. The avoidance has made it difficult to obtain insurance.

Our Investigator felt C was likely aware, when taking out the policy, of the CCJs. He was satisfied if Aviva had been informed of them at that time it wouldn't have offered cover. He concluded it had, when avoiding the policy, acted in line with the relevant legislation. He didn't recommend it reinstate the cover or do anything differently. Aviva accepted that outcome. As C didn't the complaint was 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.

As this is an informal service I'm not going to respond here to every point or piece of evidence C and Aviva have provided. Instead, I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

I've considered if Aviva's decision to avoid the policy was fair and reasonable – and in line with the relevant legislation. In particular, as the policy was a commercial one, I've considered the Insurance Act 2015 (the Act).

When taking out the cover, C (or the broker on its behalf) had a duty, under the Act, to make a "fair presentation" of the risk to the insurer.

This means it had to disclose either:

- everything they know, or ought to know, that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms; or

- enough information to put an insurer on notice that it needs to make further enquiries about potentially material circumstances.

The Act says the policyholder "ought to know" what should reasonably have been revealed by a reasonable search of information available to them. So the policyholder should take reasonable steps to check any information available to them and consider if there's anything they ought to disclose. With this in mind I've considered if C breached the duty to make a fair presentation, by not declaring the CCJs.

When taking out the policy for C, D was asked by the broker to confirm *'…there are no CCJs, IVAs, bankruptcies or previous liquidations*.' D answered '*that's right'*. A 'statement of fact' was then produced and provided to C. It explains it records the information notified to Aviva. C is requested to read it in full and advised of the duty to provide a fair presentation of the risk.

On the statement of fact answers of '*No*' are recorded besides the following '*Has any proposer, director, partner or family member involved with the business or any other company or business:*

- *in the last ten years been declared bankrupt or insolvent,*
- *in the last ten years been the subject of a CCJ, an Individual Voluntary Arrangement, a Company Voluntary Arrangement or a Sheriff Court Decree*.'

Aviva's provided details of CCJs from within the last ten years - one in D's name and two against a company she was a director of. D hasn't disputed the existence of the CCJs, just her awareness at the time she took out the policy in October 2023. So I'm satisfied Aviva wasn't provided with accurate information about CCJs when the policy was set up.

D's provided varying accounts of her knowledge or awareness of the CCJs. She's also explained the personal and professional difficulties experienced since a previous business collapsed and her husband's bankruptcy. I've considered all the explanation provided and legislation referred to - including equalities legislation. I appreciate it's been a difficult time for D, but I consider it reasonable for Aviva to say there was a breach of the duty of fair presentation by C.

D has said she was aware there may have been CCJs against her name at some time, but believed these had been extinguished by her husband's bankruptcy in 2021. In the insurance sales call D was asked to verbally confirm there are no CCJs. In the policy documents the question was about being the subject of a CCJ at any point in the last ten years. Even if she considered the personal CCJ had been extinguished, settled or set aside she had still been the subject of one in the previous ten years. So it would have been reasonable for her to declare them to the broker for the insurance application, or directly to Aviva. That would have put Aviva on notice it needed to make further enquiries.

Furthermore, D was aware of the possibility of a CCJ against her. She had never been officially informed it had been set aside or settled, but instead presumed that to be the case. In those circumstances it would have been reasonable, when being asked about CCJs, to undertake a reasonable search of available information. That would have revealed at least

one CCJ against her. So I consider the CCJ to reasonably have been something she 'ought to know'.

D has said Aviva should have undertaken its own enquiries when the policy was set up. But I consider it reasonable for an insurer to rely on the information it's been provided with by the policyholder or broker on their behalf. That's not least because the legislation places the onus on the policyholder/prospective policyholder to make that fair presentation.

Where there has been a breach of the duty of fair presentation the Act provides remedies for insurers, but only when it's a 'qualifying breach'. For that the insurer needs to show it would have done something differently had a fair presentation been made. An underwriter, at Aviva, has confirmed had the CCJs been disclosed it would have offered cover.

It's fair, then, to consider there was a 'qualifying breach'. In the circumstances the Act allows Aviva, where the breach is 'neither deliberate nor reckless' to avoid the contract, but states it must return any premiums. Aviva initially considered the breach to have been 'deliberate or reckless' so it, as is allowed for by the Act in those circumstances, retained the premium. It's since returned the premiums, so is effectively treating it is a neither deliberate nor reckless. That means there is no need for me to decide if Aviva's initial view that the breach was likely 'deliberate or reckless' was reasonable.

I appreciate the consequences of the avoidance record, but having considered matters, I'm satisfied Aviva's decision to avoid the policy was reasonable and in line with the relevant legislation. So I'm not going to require it to reinstate C's policy or ask it to do anything differently.

My final decision

For the reasons given above, I don't uphold C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 22 April 2025.

Daniel Martin
Ombudsman