

The complaint

Mr H complains that Aviva Insurance Limited unfairly cancelled home and contents insurance policies he held with it when he made a claim for fire damage.

What happened

In June 2024 Mr H contacted Aviva to report fire damage to his home. Aviva asked Mr H some verification questions to match the information Mr H provided when he bought and renewed his separate insurance policies for buildings and contents. In answering one of the questions, Mr H said a relative living at their home had an unspent conviction.

Aviva said if it had known about this, it wouldn't have offered insurance to Mr H. So it said it wouldn't deal with his claim and it avoided the policies from August 2022, when Mr H's relative moved in.

Mr H complained to Aviva. He said the policy wording wasn't clear enough. He said if he had known he needed to tell Aviva when his relative moved in, he would have. He believes Aviva's decision is unreasonable in his circumstances.

Aviva didn't uphold Mr H's complaint. So Mr H asked us to look at his complaint.

One of our Investigators didn't recommend the complaint should be upheld. He thought Aviva had been clear about the changes it needed to be made aware of – and that it had highlighted the need for Mr H to check everything was correct at each renewal, so including 2022.

Mr H disagrees. In summary he doesn't agree the decision by Aviva is proportionate compared to the impact the fire has had on Mr H and his family. He believes Aviva was vague and unclear about its requirements before he made a claim - but were able to be very clear about what wasn't covered when he claimed.

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.

I'm very sorry to read of the circumstances Mr H and his family find themselves in. Discovering that his claim won't be met by Aviva, following the aftermath of a fire in their home, has no doubt caused considerable distress and upset.

My role is to consider whether Aviva as the insurer acted in a reasonable way and in line with the policy.

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, and renewing 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.

Mr H says that his son lived on and off with him and his wife since August 2022, as well as with a partner at another address, following his release from prison. Due to a change in his personal relationship, Mr H's son was living with them at the time of the fire. Mr H says it was never the intention for Mr H's son to live permanently with them.

Aviva provides a definition of who it means when it says 'you or your' under Mr H's policy. The policy says;

"You, your - The person (or people) named on your schedule and their partner(s) and members of their family (or families) and foster children who normally live with them."

Aviva goes on to define what it means by 'lived in' as;

"Lived in' means that normal living activities like bathing, cooking and sleeping overnight are carried out in the home, for at least 2 nights each week, and the home contains enough furniture for normal living purposes."

I think Aviva clearly set out in what circumstances and who the policy provided cover for. And I find that based on what Mr H says, his son's circumstances met the definition of a member of his family who was living at the home.

I've looked at what Aviva told Mr H when he bought the policy, and what it said at the renewal date of his buildings and separate contents policy following the change of circumstances.

Highlighted as *"Important notice – information we need to know about"* Aviva explained the following:

You must always take reasonable care to give full and correct answers to the questions we ask when you take out, make changes to, and renew your policy. Please tell us if anything on your policy schedule or 'Information Provided by You' document is incorrect or changes, including (but not limited to):....

- if anyone insured (or to be insured) on the policy is charged or convicted of a (non-motoring) criminal offence.*

And;

"When you tell us about a change we will tell you if this affects your policy (for example if we can no longer offer cover or if we need to change your premium).

If you don't give us full and correct information, or tell us about the above changes, we may:

- change your premium, excess or cover;*
- refuse to pay all or part of a claim, cancel your policy or declare your policy void (treating your policy as if it had never existed).*

If you are unsure whether you need to tell us of a change please call Customer Services."

So I cannot agree with Mr H that this information was vague or buried within the policy wording. I find it was highlighted as important and clear about what Aviva needed to know, and what may happen if it doesn't know about such a change.

At renewal Aviva asked Mr H to check the 'important information' section which highlighted the importance of Mr H checking the details of the policy cover carefully – and to contact Aviva if anything needed changing.

Mr H says the fact that his son was living with them at the time is unrelated to the cause of the fire. I understand. But insurers base their appetite for risk – so their decision to offer a policy - on the information provided by a customer to the questions it asks on application. If we find the questions were clear, and a consumer failed to present the answers correctly, we cannot say the insurer is at fault for relying on the presentation made.

When Mr H applied for the policy, Aviva said it would provide insurance for Mr H, his wife and son based on the fact that no person living there had an unspent conviction. As I've said, I think Aviva clearly set out that it was important for Mr H to tell it about certain changes when he bought the policy, and at subsequent renewals. So even if the cause of the incident is unrelated, had Mr H told Aviva about the important change, Aviva would have told Mr H that it would no longer provide a policy – and Mr H would have had the opportunity to look for cover with a different insurer, based on the change of circumstances.

An insurer's underwriting criteria is individual and commercially sensitive. It varies from insurer to insurer. This is why we see such a wide range in the price insurers offer for the same cover on comparison websites. An insurer's appetite for risk – and what it chooses to charge less or more for – or cover – is not something we can interfere with.

We can ask an insurer to provide its underwriting criteria to us to show that it has treated a customer as it would any other customer in the same circumstances. But we cannot share this.

Having reviewed the information provided, I'm satisfied that Aviva treated Mr H fairly and as it would any other customer in the same circumstances. This means that the misrepresentation by Mr H was a qualifying one.

Where an insurer classifies the misrepresentation as deliberate or reckless, it can avoid a policy (treat it as though it didn't exist) and keep the premium. Aviva refunded the premium Mr H paid for his contents and buildings insurance policies since August 2022, which deems the misrepresentation as careless. I agree this was the correct approach to take.

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 H's policy produces the fair and reasonable outcome in this complaint.

I realise that Mr H will be very disappointed with my decision. And I am sorry that the consequences of not having his claim met are substantive. But I cannot say that Aviva has treated Mr H unreasonably. So I'm not asking Aviva to reinstate his policies and deal with his claim.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 May 2025.

Geraldine Newbold
Ombudsman