

## **The complaint**

Mr K and Mrs B complain that Aviva Insurance Limited ('Aviva') cancelled their car insurance policy due to it thinking a misrepresentation had been made as to who the main driver of the car was.

## **What happened**

Mr K took out a car insurance policy online provided by Aviva. The policy (which I'll call 'policy 1') began on 21 April 2024 and included Mr K as the policyholder and Mrs B as a named driver.

On 24 April 2024 Aviva wrote to Mr K to request some additional information including proof of his no claims discount, proof of address, and a copy of the V5 document.

Aviva wrote again to Mr K on 1 May 2024 to say it hadn't received the requested information and it intended to cancel the policy on 8 May 2024 because of this. Aviva said the cancellation could be avoided by Mr K logging on to his online account to provide the requested documentation. Aviva later acknowledged that most of the information it had requested was submitted online on 27 April 2024.

Mrs B contacted Aviva on 9 May 2024 to check the status of the policy. As a result of this conversation, Aviva decided to cancel the policy because it thought Mrs B said she was the main user of the car, contrary to what it had been told when the policy was taken out. In a letter dated 13 May 2024, Aviva said it couldn't reinstate this policy, but it could set up a new policy for Mr K if he provided proof of his no claims discount. However, it also said it would be unwilling to offer cover for Mrs B as a named driver on any new policy.

Mr K then took out a new policy (which I'll call 'policy 2') which started on 17 May 2024. This policy was solely in Mr K's name as the policyholder, with no named drivers included. However, on 25 May 2024 the policy was updated to include Mrs B as a named driver.

Mr K complained about Aviva's decision to cancel policy 1 and on 6 June 2024 Aviva provided a final response. Aviva said it wasn't upholding the complaint because it was satisfied it had followed the correct process and had found Mrs B had tried to take out cover in her own name for the car. It also acknowledged policy 2 had started on 17 May 2024 and said it was currently carrying out checks on this policy.

On 12 June 2024 Aviva wrote to Mr K to say it had decided to remove Mrs B as a named driver from policy 2 effective from 19 June 2024 because it had already said prior to the inception of the policy it wouldn't agree to cover her again as a named driver on a new policy for Mr K and it deemed her addition to the policy a deliberate or reckless misrepresentation.

Our investigator didn't think Aviva had acted unfairly by cancelling policy 1 as she thought the evidence showed Mrs B likely was the main driver. And she didn't think it was unfair for Aviva to have removed Mrs B from policy 2 since it had already told Mr K it wouldn't insure her in future as a named driver on his policy.

But she thought Aviva caused some unnecessary inconvenience by allowing Mrs B to be added to policy 2 when it already said it wouldn't cover her as a named driver on a new policy taken out by Mr K. So, she said Aviva should pay £75 compensation for this. And she also thought it was unfair for Aviva to require Mrs B to need to declare the cancellation in future.

Mr K didn't agree. He said he was the owner and main user of the car and Aviva hadn't proved Mrs B was the main user. He also said Mrs B had experienced problems taking out cover elsewhere, despite Aviva saying it hadn't externally recorded she had been removed from the policy.

Aviva didn't think the recommendation for it to pay £75 compensation was fair. It referred to technical reasons why its agent wouldn't have been able to know at the time Mrs B shouldn't have been added to policy 2, but also said before this happened it had been clear to Mr K and Mrs B that it wouldn't cover Mrs B as a named driver on a new policy for Mr K. So, it thought Mr K and Mrs B could have acted to avoid the issue.

Because neither party agreed with the investigator, the complaint was referred to me to decide. I issued a provisional decision not upholding the complaint, and I said:

*"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 thinks Mr K failed to take reasonable care not to make a misrepresentation when the policy was taken out because he said he'd be the main driver, but Aviva doesn't think that he was.*

*Aviva has provided a copy of the question asked when policy 1 was taken out online. This says:*

*"Who will be the main driver?"*

*The main driver doesn't have to be the policyholder, but it should be the person who drives the car most of the time"*

*I think this is a reasonably clear question. Mr K says he is the owner and registered keeper of the car. I don't dispute this. But that doesn't mean he'd be the person using the car most of the time. And were he not, the question he was asked provided the opportunity for it to be disclosed someone else would be the main driver.*

*Mr K doesn't dispute selecting himself as the main driver. But he says that wasn't a misrepresentation because he is the main driver.*

*I've listened to the recording of the conversation between Aviva and Mrs B on 9 May 2024. Mrs B was asked how often she used the car, how often Mr K used the car, and how often another named driver on the policy used the car.*

*Mrs B said she used the car about three times a week, didn't use it for commuting, and drove less than 20 miles a week. She said Mr K used the car once every two weeks but has another car and mainly used that. And she said the other named driver doesn't live in the UK so would only use the car infrequently when visiting here.*

*I acknowledge Mr K and Mrs B say English isn't their first language. But I'm not persuaded Mrs B didn't understand the question she was asked. I think what she was asked was reasonably clear, and her answers about the usage of the car by each driver were specific and directly related to the question. Mrs B didn't seem to hesitate answering the question, and didn't mention at the time any difficulty understanding it. It was only after Aviva had confirmed it would cancel the policy that any language difficulties were mentioned.*

*Additionally, Aviva has provided evidence to show that after policy 1 was cancelled, Mrs B went online to get multiple quotes from Aviva for the car, in her name, between 13 May 2024 and 16 May 2024. This is despite Aviva having said during the conversation with Mrs B on 9 May 2024 that it would not insure her to drive this car. I think these attempts after the cancellation to take a new policy out in Mrs B's name reasonably would reinforce Aviva's belief that she is the main driver.*

*So, based on what Mrs B said during the conversation, and her attempts following the cancellation to take cover out again with Aviva with herself as the policyholder, I think Aviva had a fair and reasonable basis to think Mrs B was the main driver of the car. And because of that, I don't think reasonable care was taken not to make a misrepresentation when policy 1 was taken out since a clear question was asked about who the main driver was, but Aviva had a fair basis to think it was someone different to whom they were told.*

*Under the policy terms, Aviva were entitled to cancel the policy if it had evidence that incorrect information had been provided. CIDRA also allows an insurer to avoid an insurance contract in circumstances where a misrepresentation - which would have affected whether the insurer would have entered into the contract, or the terms on which the insurer would have entered into the contract - has deliberately or recklessly been made.*

*So, I think Aviva had a fair and reasonable basis to cancel policy 1 as it had reasonable grounds to think the policy was mainly for the benefit of Mrs B who'd be using the car the most, but the information it was provided when the policy was taken out was that Mr K would be the main driver.*

*Aviva confirmed to Mrs B during the conversation on 9 May 2024 it wouldn't cover her again as a named driver on a policy for Mr K. Aviva also confirmed this in writing in the letter it sent to Mr K on 13 May 2024. I don't think it was unreasonable for Aviva to have made this decision, and since it did so and communicated it before policy 2 was taken out, I don't think it was unfair for Aviva to remove Mrs B from policy 2 when she was subsequently added as a named driver.*

*I don't dispute Aviva allowed Mrs B to be added on to policy 2. But that was due to Aviva's agent at the time not being aware it had been decided Mrs B couldn't be added to as a named driver to any subsequent policy for Mr K. Had this agent have been aware of this at the time, I don't think it would have added Mrs B as a named driver to policy 2.*

*I think the main cause of this though was Mrs B being added as a named driver to policy 2 despite Aviva having already confirmed on the phone and in writing it would not cover Mrs B*

*again as a named driver on a new policy for Mr K. So, I think any inconvenience caused could have been avoided had it not been requested for Mrs B to be added to policy 2. As such, I don't think it's warranted for Aviva to compensate Mr K and Mrs B for this.*

*Lastly, the investigator said that she doesn't think it was fair for Aviva to say Mrs B will need to declare the cancellation moving forwards since Mrs B wasn't involved in the conversation when she was added to policy 2.*

*Ultimately, I don't think it was unfair for Aviva to have cancelled policy 1, or for it to have removed Mrs B from policy 2. So, I won't be requiring it to change what it has recorded with respect to those policies. And since it's Mr K and Mrs B's responsibility to ensure they take reasonable care not to make a misrepresentation when taking out insurance in the future, it isn't for me to direct them on what they need to disclose to any other insurers."*

Aviva replied to say it had nothing further to add. But Mr K replied disagreeing with the provisional decision and in summary, he said:

- It was unfair and contrary to data protection principles for the policy to have been cancelled based on information which Mrs B provided.
- He has digital data including tracker data and satellite maps which shows that most of the miles driven by the vehicle on the policy which was cancelled were by him.
- The onus is on Aviva to show Mrs B is the main driver if it believes that were the case.

### **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've read and considered everything Mr K has said in response to my provisional decision. I won't be commenting on every point made, but I'll instead respond to what I think are the key points I need to consider to reach a fair decision. This isn't meant as a discourtesy to Mr K, but instead reflects the informal nature of this Service.

Mr K said that he has data which shows that he was the main driver of the car, rather than Mrs B. But Mr B hasn't provided this data, nor have I seen anything showing he previously sent it to Aviva. And I'm satisfied he has been given a fair opportunity to submit any further evidence, and that I have enough information to make a fair decision on the complaint. So, Mr B's comments about this data haven't led me to conclude differently from my provisional decision on the complaint.

Mr K says that it was unfair and against data protection principles for Aviva to have cancelled the policy based on the responses Mrs B gave during the telephone conversation on

9 May 2024. I've thought about whether it was unfair for Aviva to have had this conversation with Mrs B, and to have relied on the information she provided during it.

Mrs B was a named driver on the policy, so was a party to the contract. And I think that reasonably allowed Aviva to speak with her. Mrs B contacted Aviva to get an update on the status of the policy following the warnings it had sent that the policy would be cancelled, and this led to the discussion around how often she used the car. I don't think it was unfair for Aviva to have discussed with a named driver whether the policy had been cancelled, or the usage of the car.

Ultimately, the cancellation was due to the misrepresentation that was made when the policy was taken out that Mr K was the main the driver, and not the conversation Aviva had with Mrs B. Information was shared by Mrs B during this conversation which led it reasonably think Mr K wasn't the main driver. But had Aviva found the same information another way, and had it showed on balance Mr K wasn't the main driver, Aviva would still have been entitled to take the actions that it did due to the original misrepresentation.

Lastly, I don't dispute the onus was on Aviva to show Mrs B was the main driver if it believed that to be the case. But I think on balance Aviva has shown this for the same reasons which I set out in my provisional decision. And, while I acknowledge Mr K disputes that Mrs B was the main driver, having considered the evidence provided by Mr K and Aviva, I'm not persuaded it's been shown that she wasn't. As a result, I don't think Aviva acted unfairly, so I won't be requiring it to do anything more.

### **My final decision**

For the reasons which I have set out here, and in my provisional decision, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs B to accept or reject my decision before 6 June 2025.

Daniel Tinkler  
**Ombudsman**