

complaint

Ms A has complained that Aviva Insurance Limited avoided her car insurance policies and didn't settle her claim for the damage to her car because of this.

background

Ms A took out her first car insurance policy with Aviva through a broker in May 2017 and shortly after taking this out she got her car vinyl wrapped. The wrapping cost around £2,000 and changed the colour of the car.

In May 2018 Ms A renewed her policy with Aviva through the broker. And in January 2019 her car was damaged during a collision. So, Ms A made a claim with Aviva in late February 2019 for the damage.

Aviva investigated Ms A's claim. It asked her for proof of her address, which Ms A didn't provide. But it agreed to repair the car - until it received the estimate and images of the car, which showed it was vinyl wrapped - something Ms A hadn't told Aviva about. So, Aviva avoided Ms A's policies and rejected her claim on the grounds she'd failed to take reasonable care not to make a misrepresentation.

Ms A was unhappy with Aviva's decision. She said she didn't know that her car being wrapped was a modification. So, she complained to Aviva. Aviva responded and didn't uphold Ms A's complaint. It said, as Ms A also hadn't provided proof of her address, it had decided to avoid both her policies from when they started, as it thought she'd given it the wrong address when buying her first policy. But it confirmed it had intended to cover the costs of repairs until it found the vehicle was vinyl wrapped. And it said that, as Ms A didn't tell it about this, it had decided not to pay for the repairs after all.

Ms A remained unhappy and brought her complaint to our service. Our investigator looked into this and didn't uphold it. She said that Ms A ought to have known the wrapping of her car was a modification and she should have told Aviva of this at renewal in May 2018. And she felt Aviva was entitled to avoid Ms A's policies and decline her claim.

Ms A disagreed with our investigator's view and still thought Aviva should pay for the repairs to her car. So her complaint was passed to me for an ombudsman's decision.

I issued a provisional decision in June this year. In this I explained that I was satisfied Aviva was entitled to avoid both Ms A's policies on the basis she had misrepresented the address at which she kept her car and failed to let it know she'd had it vinyl wrapped. I gave both parties a month to provide further information and evidence.

Aviva said it had nothing further to add. Ms A responded to say that my provisional decision

was based on wrong assumptions. This was because she thought Aviva would still have insured her car if it had known it was vinyl wrapped. And she also said that she had not given her other address to gain financially, but because it was where the car was registered and her brokers had automatically insured it there. Ms A also said she'd never had a refund of her premiums from Aviva. I also spoke to Ms A over the telephone and she provided similar comments. And she made it clear she did keep her car at her other address most of the time, at least from renewal of her policy in 2018 onwards.

Having considered Ms A's comments, I changed my view and said to Aviva I didn't think she failed to take reasonable care not to make a misrepresentation by not telling it she'd had her car wrapped. I explained this was because I now accepted she didn't realise this was a modification she needed to let Aviva know about. I also said I was likely to say that she carelessly misrepresented that she kept her car at what I'll refer to as address A. And that I was likely to require Aviva to settle her claim proportionately because of this. And I asked Aviva to provide me with the premium Ms A would have paid in 2018 if she'd given the address she kept the car as the one she seems to live at now, which I will refer to as address B. Aviva provided information on the premium, but didn't comment further on Ms A's misrepresentations.

I then issued a second provisional decision and I've set out what I said in the provisional findings section of this below:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I explained in my previous provisional decision Aviva and Ms A's obligations under The Consumer Insurance (Disclosure and Representations) Act 2012. And I've now considered further whether Ms A failed to take reasonable care not to make misrepresentations when she took out her policy in May 2017 and when she renewed it in May 2018.

I'm now satisfied Ms A didn't fail to take reasonable care not to make a misrepresentation when she renewed her policy in May 2018 by not telling Aviva her car had been vinyl wrapped. This is because my research suggests most reasonable consumers don't realise that wrapping is a modification that needs to be declared. This is because it doesn't enhance performance and is really cosmetic and a sort of paint protection system. I think if insurers want consumers to realise this is a modification they need to make this clear in the question they ask about modifications or by an accompanying note. This means I don't think Aviva was entitled to avoid Ms A's policy from renewal in 2018 on the basis she made a qualifying misrepresentation regarding the vinyl wrapping of her car.

Turning now to whether Ms A made a qualifying misrepresentation on the address where her car was kept. When I spoke to Ms A on 20 August I asked her to provide me with a copy of the registration document for her car, so I could see it had always been registered to address A. She told me it would be difficult for her to obtain this, as the original was at address A and she was currently staying at address B. But she told me she would go to address A to get it and send me a copy. I wanted to see this to back up Ms A's assertion that the reason she gave this address for where her car was kept was that the car was registered there.

Ms A still hasn't provided this, as far as I can see, so I've decided to proceed without it and accept her testimony that the car was registered to address A. But I think it is most likely it was kept at address B when she took out her policy in May 2017 and when she renewed it in

May 2018. And the evidence I've seen and heard suggests Ms A said when she applied for her policy that the car was kept at address A, when she should have explained she spent most of her time at address B and kept it there. And then when she got the renewal documents in May 2018 and they showed the car was kept at address A, I think Ms A failed to tell Aviva this was wrong and that it was normally kept at address B. I think this means Ms A failed to take reasonable care not to make a misrepresentation on both these occasions.

I've established with Aviva that it would have charged a higher premium at renewal in 2018 if Ms A had told it that her car was kept at address B, although I am still to establish exactly what that premium would have been compared to the premium she actually paid. I haven't got anything to show the premium at inception in 2017 would have been higher, but I am willing to accept it would have been based on the fact it was at renewal in 2018. Aviva has mentioned it would not have insured Ms A's car if it was worth over £75,000 if it wasn't kept in a garage overnight, but it seems it wasn't worth this much when she took out the policy.

This means I'm satisfied Ms A made qualifying misrepresentations on both these occasions. But, I now think these were careless, as opposed to deliberate or reckless misrepresentations, on the basis Ms A gave address A, as her car was most likely registered there.

Under CIDRA the remedy for a careless qualifying misrepresentation where the insurer would have charged a higher premium is a proportionate settlement of any claim. And where there hasn't been a claim, the policy can carry on and if there were or are any claims these would be settled proportionately. As far as I know Ms A didn't make any claims on the policy she took out in May 2017. And this means this policy simply needs to be noted on Aviva's systems as reinstated and any record of it being avoided removed from its records and any central databases. The same should happen with the policy Ms A took out when she renewed in May 2018, but the claim under this policy should be settled proportionately based on the premium she should have paid using the formula set out in CIDRA. As I've said, I am yet to establish what the correct premiums are for this calculation, but it looks like Ms A is likely to receive less than 50% of the cost of repairing her car in settlement of her claim. And I think me requiring Aviva to take these actions is the fair and reasonable outcome to Ms A's complaint.

I gave both parties until 29 September to respond to this provisional decision originally and I then extended the deadline to 23 October for Ms A respond. Aviva hasn't responded on the merits of the complaint. But it has said the premium would have been £2,729.59 when the new policy started at renewal in May 2018 against the premium Ms A actually paid of £1,113.82. This means Ms A paid 41% of the premium she would have paid if she taken reasonable care and not misrepresented the address where her car was kept.

Ms A hasn't responded to my second provisional decision despite phone calls to check she'd received it, as well as a follow up email checking she had and extending the deadline for her to respond to 23 October.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As neither party has responded on the merits of the case and my provisional findings as set out in my second provisional decision, I see no reason to alter my view on what I think is the fair and reasonable outcome to Ms A's complaint.

Now that Aviva has clarified the premium Ms A would have paid if she'd given the correct address for where her car was normally kept, my calculations suggest Aviva should pay 41% of her claim for the damage to her car, less any excess applicable. But Aviva should check this is in line with the appropriate formula set out in CIDRA. And settlement will be subject to Ms A providing an invoice to show she has had the repairs carried out at a reasonable cost.

my final decision

For the reasons set out above and in my provisional decision dated 15 September 2020, I uphold Ms A's complaint and Aviva Insurance Limited must do the following:

- Reinstatement of the policy Ms A took out in May 2017 and removal of any reference of it being avoided from any internal and external databases.
- Reinstatement of the policy Ms A took out at renewal in May 2018 and settlement of her claim under it proportionately using the formula set out in Schedule 1 of CIDRA for proportionate settlements.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 6 December 2020.

Robert Short
Ombudsman