

complaint

Mr S complained that Aviva Insurance Limited avoided his motor insurance policy.

background

Mr S reported to Aviva that his car had been vandalised when parked overnight. But Aviva decided that Mr S had deliberately misrepresented his home address where the car would be kept overnight, and if he'd told them his correct home address, they would have charged him a higher premium or wouldn't have insured him at all.

So Aviva avoided Mr S's policy, meaning they treated it as if it hadn't existed from the start. They wouldn't pay his claim for his car and wouldn't refund the premiums he'd paid.

Mr S denied having made a deliberate misrepresentation. He said that he did live at the address he'd given Aviva. He wanted them to accept his claim, accept that he hadn't made a deliberate misrepresentation, apologise, and refund the premiums he'd paid. He also felt that they'd delayed in replying to his complaint and in telling him his right to complain to this service. Mr S brought his complaint to us, via his solicitor.

The investigator didn't recommend that his complaint be upheld. He thought that Aviva hadn't been unreasonable on the evidence they had. Mr S disagreed so his case was passed to me to decide.

my findings

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 The Consumer Insurance (Disclosure and Misrepresentation) 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.

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 must show that 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was deliberate or reckless, and the insurer can show that they would not have offered the policy at all, or that they would only have offered it on different terms, they are entitled to avoid the consumer's policy. This means they will not have to deal with any claims under it. They may also keep the premiums paid.

When an insurer claims that a consumer misrepresented information that's important to the insurer, we check whether the insurer asked the consumer a clear question about that information when they took out the policy.

I've seen the questions the online comparison site asked of Mr S when he took out the insurance policy, and his answers:

"What is your address?" Mr S answered, "Address A".

"Is the car kept overnight at home or elsewhere?" and he was given the option of "At home" or "Elsewhere". He answered, "At home".

I think that those are clear questions. So I must consider whether Mr S took reasonable care to answer them.

Aviva claimed that Mr S deliberately or recklessly misrepresented his home address where he said his car was kept overnight. When Mr S reported to Aviva that his car had been vandalised, they asked if it had happened at his home (address A). Mr S said it had happened at a different address, B, which he said was a friend's address and he had been staying there while his friend was away. But he also said that he owned address B and used it as a business and correspondence address.

Aviva said that if they'd known that his car would be overnight at a different address from address A, which he'd said in the application was his home address, they wouldn't have insured him at all. And if he'd given address B as his home address at the start, they'd have charged him a higher premium. They've shown us evidence to confirm this. They felt he'd deliberately miss-stated his home address to obtain a cheaper premium.

Aviva asked him to prove that address A was his home address. Mr S gave them a letter from HMRC about tax credits, which was addressed to him at A. But he said he couldn't provide any other documentation, such as utility bills, with address A as they were all in his wife's name. He provided two letters to him from the council, confirming that he paid the council tax on both addresses A and B. But both of those letters were addressed to him at address B.

His car's registration document didn't show either address A or B, as it was still in the manufacturer's name. But he produced several other documents which showed his address as being address B. This included a copy of his driving licence which he'd only just renewed the month before he took out the policy, and a bank statement for a period just after he took out the policy. Taking all this together, Aviva thought that Mr S's home was address B not address A, contrary to what he'd said when he took out the policy, and that he did not take reasonable care in answering Aviva's questions about his home address and this was deliberate.

I think that on the above evidence that Aviva had, it was reasonable for them to take that view, and to declare Mr S's policy void from the start. So I don't ask them to do anything different there.

Aviva also showed us that his policy schedule made it clear that they'd asked Mr S to check his policy documents carefully afterwards, as if the information was incorrect it could affect his policy's validity. A similar warning was given in the policy itself. So I think that Aviva gave warnings about the effect of not checking the documents carefully.

Taking all the above evidence together, I think that Aviva fairly decided that Mr S did not take reasonable care not to make a misrepresentation. And they've shown us evidence that if Mr S had not made this misrepresentation, they either wouldn't have offered Mr S insurance at all or would have offered it on at higher premium shown – so the mis-representation would've affected the terms. So I'm satisfied that Mr S's misrepresentation was a qualifying misrepresentation. Under CIDRA, Aviva can retain the premiums Mr S paid, if they can show that his qualifying misrepresentation was deliberate or reckless. And I think that they've done that, so they haven't acted unfairly there.

I realise that Mr S is likely to be disappointed with this decision, But I think that Aviva's view that Mr S deliberately mis-represented information in taking out the policy was reasonable. And so their decision to avoid his policy was also reasonable.

Mr S's solicitor complained that Aviva didn't deal with Mr S's complaint promptly enough or explain his rights when they avoided the policy. Aviva acknowledge they didn't reply prompt to his solicitor but said this was because they needed Mr S's authority to do so first. They gave Mr S the reasons for their decision in about August, but they didn't have to give him his complaint rights then as he hadn't complained. And though it seems that they didn't send him a final response to the complaint as they should, I'm not persuaded that this caused Mr S any prejudice, as Mr S did then bring his complaint to us. And so, I don't ask Aviva to do anything else about this.

my final decision

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

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 14 October 2020.

Rosslyn Scott
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