

## **The complaint**

Mr M complains Aviva Insurance Limited avoided his motor insurance policy (treated it like it never existed) and refused to pay his claim.

## **What happened**

Mr M took out a motor insurance policy with Aviva in June 2022. When his motorbike was stolen in September 2022, he tried to make a claim.

After investigating the claim, Aviva said Mr M had deliberately misrepresented the 'Kept Overnight' address for where the motorbike was to be stored when taking out the policy on the phone. Aviva considered this a deliberate or reckless qualifying misrepresentation which entitled it to avoid his policy and decline his claim. This also allowed it to keep his premium.

Mr M said, in error, the incorrect postcode was submitted by him when he took out a policy over 3 years ago and since then it has auto renewed. He said this error appeared on page 5 of the insurance document and the main details on page 1 were correct. However, last year he changed his motorbike and updated the insurance with the new details. And, at no point, has he been notified of the potential error by Aviva.

As Aviva didn't change its view, Mr M brought his complaint to this service. He doesn't think the way Aviva has acted is fair. To put things right, he says the insurer should clear the outstanding finance/pay the value of his motorbike, reinstate his no claims, and clear his record of the cancellation.

The Investigator looked into matters but didn't think it should be upheld. They agreed there had been a qualifying misrepresentation, so, Aviva was entitled to take the steps it had.

Mr M doesn't agree with this. He feels the call recording shows he took reasonable care to be explicitly clear the motorbike would be kept in London so it's a careless error. He feels Aviva accepted the premium knowing he wouldn't keep it at the stated overnight address and that it'd never pay any claims made by him. He says other insurers would've spotted the distance between the two addresses and wouldn't have processed the policy and taken payment.

The matter has now been passed to me for a decision.

## **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.

Having done so, I must tell Mr M I think the investigator has reached a fair outcome here. So, I don't uphold his complaint in this matter. I'll explain why.

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.

If the 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 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 says Mr M failed to take reasonable care not to make a misrepresentation when he answered questions about where his motorbike would be kept overnight and took out an insurance policy based on an address he didn't intend to use to store his motorbike. I'm satisfied Aviva's position here is both fair and reasonable. I say this because I've listened to what Mr M said when the policy was taken out and include the below extract discussing the bike's location.

Call handler: *Where will the bike be kept overnight?*

Mr M: [sounds like] *on the street*

Call handler: *On the street?*

Mr M: *Off the street*

Call handler: *Sorry is that in a garage, a road, a driveway?*

Mr M: *Driveway, front garden basically*

Call handler: *At your postcode [Mr M's home address in London]?*

Mr M: *Yes*

Other details of the motorbike and Mr M are discussed. Aviva then explained it wouldn't provide cover, likely due to the value of the motorbike and fact it won't be garaged. Mr M says he had a quote previously for a higher value motorbike through Aviva. The call handler confirms this is because it was kept in a garage. Mr M then says he can keep it in a secure garage at work (a second address). So, Aviva quoted for the second address – just under £3,400 – but Mr M was unhappy to pay this. He asked why the insurance was much cheaper for his motorbike previously and the call handler said this could be because he kept it at a different address (a third address). The conversation continues as extracted below.

Mr M: *How can I get it [the motorbike] up to that area then? Can I keep it in that area, the same area, is that possible?*

Call handler: *I can have a look. It's just the postcode you gave me, I don't know where that is so... what's the postcode please, where's the...*

Mr M: [Gives a third postcode and the one used previously] - *that might be better.*

They continue to discuss the structure the motorbike will be kept in. The call handler confirms '*for the bike to be kept at that address, Aviva is quoting you £721.84*' and for a

slightly lower annual mileage but the '*same garaging address at [the third postcode]*', this was reduced further. This is the quote Mr M accepted. However, Mr M didn't keep his motorbike in the location he said he would when taking out the insurance policy.

Having listened to this call, I'm satisfied Mr M asked Aviva to use a previous address as his kept overnight address with the intention of obtaining a quote and reducing the cost of it. As far as he stated on the phone – this was based on him keeping the motorbike in a garage at the third address. However, I haven't seen any evidence Mr M intended to do this. I'm satisfied it's more likely he intended to store the motorbike at his home address in London - a location Aviva wasn't willing to insure due to the risk it presented. This is also the address it was later stolen from.

Aviva made it clear in the call how important it is to answer the questions correctly. I've also seen this was repeated on the Statement of Insurance.

Given Aviva had already told Mr M it wouldn't give him a quote for his home address in London, I'm satisfied it would never have offered cover if it'd been given the correct information about where Mr M's motorbike would be kept. So, I'm satisfied Mr M's representation was a qualifying one.

Aviva considers Mr M's representation was deliberate or reckless. In light of the information set out above, I see no reason to interfere with this.

As I'm satisfied Mr M's representation should be treated as a deliberate or reckless qualifying misrepresentation, I've looked at the actions Aviva can take in accordance with CIDRA. And I agree Aviva was entitled to avoid Mr M's policy in accordance with CIDRA from the inception of the policy. As this means - in effect - his policy never existed, Aviva doesn't have to deal with Mr M's claim following the theft of his motorbike. And it can keep the premiums paid.

I note Mr M refers to what he thinks other insurers would've done in this situation. But my role is to look at the individual circumstances of what happened in this case. Having done so, I'm satisfied the above is a fair and reasonable way to resolve this complaint.

I'm aware Mr M says Aviva is to blame as this was clearly a mistake on his part which Aviva knew. I don't see things the same way. Mr M was obliged to provide accurate information in his answers, taking care not to make a misrepresentation. I've already found Mr M failed to do this and so Aviva isn't responsible for the position Mr M now finds himself.

### **My final decision**

For the reasons set out above, I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 August 2023.

Rebecca Ellis  
**Ombudsman**