

The complaint

Mr R complains Aviva Insurance Limited (“Aviva”) avoided his motor insurance policy (treated it like it never existed) and refused to pay his claim following the theft of his car.

What happened

Mr R had a car insurance policy with Aviva. The policy renewed in March 2023 and was due to expire in March 2024.

Unfortunately in April 2023 Mr R’s car was stolen. So he reported the matter to Aviva to start the claim process.

Aviva offered Mr R a settlement based on its valuation of Mr R’s car, but Mr R felt this was too low so he asked Aviva to reconsider. Aviva did so and increased the offer. Mr R felt that offer was still too low so Aviva referred the claim to their in-house senior engineer. At that point Aviva identified Mr R’s car had modifications which he hadn’t declared. Aviva were of the view this was a careless qualifying misrepresentation so it avoided the policy. It explained Mr R hadn’t declared any modifications on his car when he took out the policy. Aviva said if he had declared the particular type and number of modifications on his car, this wouldn’t have met its underwriting criteria so it wouldn’t have offered him a policy. And this is why it decided to avoid the policy and decline the claim.

Mr R says it was always his intention to declare the modifications and had only recently had them fitted. Mr R says the fact that he alerted Aviva as to the modifications after his car was stolen demonstrates that he made a genuine mistake in not disclosing them. And as such Aviva should honour the offer made in settlement of the claim. So Mr R referred his complaint to this service.

One of our investigators looked into things for him. She said Aviva hadn’t provided sufficient information that showed avoidance of the policy was an available remedy under the relevant law, so Mr R’s policy had been unfairly voided. The investigator said Aviva should consider Mr R’s claim on a proportionate basis if Aviva would still have offered him a policy, albeit at a higher rate. She recommended Aviva pay Mr R £150 for the trouble and upset caused.

Aviva didn’t agree and said the underwriting team confirmed that had Mr R declared the modifications at policy inception the policy wouldn’t have been accepted. Aviva said Mr R was aware of the modification since he purchased the car from a specialist forum and confirmed this when discussing the value of the car. Aviva said the policy was voided due to careless misrepresentation, and all premiums had been refunded. It said it wouldn’t be looking to proceed with the claim. Our investigator asked for further evidence to support Aviva’s stance on the claim. On receipt of that information she issued a further view.

Our investigator said Aviva were unable to show what questions Mr R was asked when he took out the policy, and what responses were provided. So she didn’t think Aviva had demonstrated the questions asked were clear and specific, or that the information provided by Mr R was incorrect or incomplete. Aviva hadn’t shown Mr R failed to take reasonable care, so the misrepresentation isn’t a qualifying one. As such the investigator said there was

no remedy to Aviva under the relevant law. The investigator said Aviva should remove the record of voidance from its system and consider Mr R's claim in full. She also recommended Aviva pay £150 for the trouble and upset caused, plus 8% simple interest on the settlement.

Aviva provided further, more detailed information so the investigator issued another view. She said Aviva had shown Mr R made a misrepresentation when taking out his insurance. And so Aviva acted fairly in voiding his policy. The investigator said the communication from Aviva was poor during the claim journey and so she recommended it pay £150 to reflect the distress and inconvenience caused.

Mr R didn't agree. He said it was unfair that Aviva didn't provide the information the investigator needed at the outset, and it should have lost its opportunity to submit further evidence. He said Aviva provided him with a settlement offer knowing about the modifications and should honour it. Because Mr R didn't agree the complaint has come 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'd like to start by assuring Mr R that I've considered all the information provided as well as his comments in coming to my decision.

I appreciate Mr R feels very strongly that Aviva has treated him unfairly. In reaching my conclusions I've needed to consider the relevant law which is Consumer Insurance (Disclosure and Representation) Act 2012 (CIDRA), as well as the terms and conditions of the policy, and the circumstances of the claim.

Misrepresentation

The relevant law in this case is CIDRA as detailed above. This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance policy. 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 qualifying, 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 R failed to take reasonable care not to make a misrepresentation when he failed to disclose the modifications on his car. Mr R has said he didn't have a chance to notify Aviva about the modifications since he was busy at the time. But regardless, I think Mr R had the opportunity to review his submission when completing the price comparison websites. And again when the documents were sent to him after he took the policy, and again when the policy renewed since they clearly state 'no modifications'. I would have expected Mr R to check the cover to ensure the details were correct. And I can't see he did that.

So, I'm satisfied the question asked was clear and Mr R failed to take reasonable care not to make a misrepresentation.

As I'm satisfied Mr R's misrepresentation should be treated as a careless qualifying misrepresentation, I've looked at the actions Aviva can take. Having done so, I'm satisfied Aviva was entitled to avoid Mr R's policy in accordance with CIDRA. As this means his policy never existed, Aviva does not have to deal with his claim following the theft of his vehicle. However it does need to return the premiums to him from the point of renewal.

Aviva has provided evidence by way of the relevant underwriting criteria which shows that part of the decline criteria is modifications to the vehicle; ones that aren't fitted by the manufacturer. So had Aviva been aware of the number and type of modifications Mr R's vehicle had it wouldn't have provided cover for the car. And so I agree with Aviva here, that Mr R made a qualifying misrepresentation. Mr R has disputed that some of the modifications were after-market – I will come onto this point later.

Aviva say Mr R's misrepresentation was careless because he didn't take care to answer the questions accurately or take care to update Aviva as to any changes to his vehicle.

I have looked at what Mr R has said about what happened when he answered questions about the modifications. He said due to a particularly busy time in his life it slipped his mind to let Aviva know about the modifications, but he had intended to do so. I empathise with Mr R's position here and can see why he's frustrated; he perhaps didn't appreciate the potential consequences of his actions. But I can't say Aviva treated him unfairly here. Although I accept Mr R might not see it that way.

Taking all of this into account I'm satisfied Aviva acted fairly and reasonably when voiding the policy and treated it as though it didn't exist. And its actions are in line with the actions it can take in accordance with CIDRA. Since CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Aviva to rely on it to avoid Mr R's policy produces a fair and reasonable outcome in this complaint.

Modifications

Mr R said, "*The non-manufacturer modifications were some carbon exterior visual upgrades and had only recently been applied to the vehicle.... I unfortunately did not get the opportunity to call and update my policy regarding the modifications.*" Mr R also said, "*I understand they should have been disclosed at the earliest opportunity.*" So, I'm satisfied Mr R was aware that he needed to declare the modifications he'd made to his vehicle.

Mr R says Aviva should have taken the time to discuss the nature of the modifications with him. It isn't for the insurer to ensure the customer has answered the questions correctly. It is the customer's responsibility to check they have answered everything correctly, and that they have updated their insurer as to any changes. The terms of the policy say;

"You also need to tell us about: any vehicle modifications. When you inform us of a change, we will tell you if this affects your policy, for example whether we can no longer offer cover, or 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:

- *Refuse to pay all or part of a claim or cancel your cover*
- *Change your premium, excess or cover."*

So I can't say Aviva did anything wrong here since Mr R failed to notify it of the modifications.

The photographs

When negotiating with Aviva regarding the value of his vehicle Mr R noted the following modifications, “*CSL wheels, LCI rear lights, and a large number of carbon parts added (front splitters, side skirts, rear diffuser, and spoiler.*”

Mr R subsequently said three of the modifications on his vehicle were aftermarket and the other three modifications were “OEM”. OEM stands for “*Original Equipment Manufacturer*”, and he says they were on the vehicle when he purchased it. But there is no evidence to show those parts were factory fitted by the manufacturer. So Aviva asked for photographs of the vehicle so it could establish whether the items were aftermarket or not.

Mr R provided photographs but unfortunately Aviva weren’t able to assess the modifications on the basis of those photographs. So I think Aviva has tried to assist Mr R with his claim here, and that’s what I would have expected it to do.

Voiding the claim

Mr R says Aviva has done all it can to avoid the claim. But I haven’t seen any evidence of this. Aviva is entitled to conduct an investigation into the circumstances of the claim, and if it doesn’t receive satisfactory evidence proving the claim, it’s entitled to make enquiries as it did here. And an insurer will always have to validate a claim before paying any settlement. So I don’t think Aviva acted unfairly here.

Mr R says Aviva were aware of all the modifications when it made a settlement offer for his car and so it should honour the offer. But I don’t agree. Mr R failed to notify Aviva about the modifications so it wasn’t aware of them. During the course of negotiations Mr R made Aviva aware of the modifications and at that point it voided the policy. The nature of a claim is that things can change as it progresses, which is what happened here. Aviva is only responsible for the cost of Mr R’s vehicle within the terms of the policy. And when it became aware of the modifications it took steps to look into this further, by referring it to the underwriter, to ensure it was only paying out what it was liable to.

I want to assure both parties I’ve read and considered everything they’ve sent in, but if I haven’t mentioned a particular point or piece of evidence, it isn’t because I haven’t seen it or thought about it. It’s just that I don’t feel I need to reference it to explain my decision. This isn’t intended as a discourtesy and is a reflection of the informal nature of our service.

Conclusion

I understand this isn’t the outcome Mr R is hoping for. But any decision I make must be both fair and impartial. In this situation Mr R made a qualifying misrepresentation when he failed to notify Aviva about the modifications to his vehicle.

Mr R’s failure not to take care meant he was provided with a contract of insurance that he wouldn’t have been offered otherwise. So Aviva voided the policy and treated it as if it never existed. And in doing so Aviva acted in accordance with CIDRA.

Putting things right

Aviva accept communication with Mr R has been poor. I agree with the investigator that Aviva’s communication could have been better and so it should pay Mr R £150 to reflect the distress and inconvenience caused.

My final decision

For the reasons set out above my final decision is that I uphold this complaint in part. I require Aviva Insurance Limited to pay Mr R £150 as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 June 2024.

Kiran Clair
Ombudsman