DRN-4751452

The complaint

Mr M complains about how Aviva Insurance Limited handled a claim made on his motor insurance policy.

What happened

Mr M's car was damaged in a non-fault accident, and he made a claim on his policy. Aviva said the car was a total loss, but it wouldn't cover the value of the modifications made to the car. Mr M was unhappy with this as he wanted to retain and repair the car, and that Aviva took his car to a salvage yard, where he said it had been further damaged. Mr M wanted to close his claim as for notification only, but he was unhappy when Aviva told him he would have to repay its outlay. And he was unhappy that its calls to Mrs M caused her stress.

Aviva said it was its procedure to remove the car to salvage when a settlement offer was made, and it said Mr M would have been told this at the time. It said the modifications hadn't been disclosed when Mr M took out his policy. And, if he had disclosed them, then it wouldn't have offered cover. Aviva accepted that the salvage company had caused further damage to the car. But it said it had replaced the windscreen and offered Mr M £580 compensation for this. It said it would close the claim as non-fault regardless of whether or not it recovered its outlay. Aviva offered Mr M £150 compensation for any trouble and upset caused. But Mr M remained unhappy.

Our Investigator didn't recommend that the complaint should be upheld. She didn't see evidence that Mr M had disclosed the modifications. And she thought it was reasonable for Aviva to pay a settlement without cover for them. She thought it wasn't unreasonable for Aviva to take the car to a salvage yard. And she thought the compensation for further damage was reasonable. She thought Mr M should provide evidence of any further damage or that the compensation wouldn't cover the cost of repairs. She thought it was reasonable for Aviva to agree to close the claim as non-fault. And she thought its offer of compensation for trouble and upset was fair and reasonable. So she thought it needn't do anything further.

Mr M replied that he wanted Aviva to pay for the full cost of repairs needed and include the modifications. He said these had been disclosed when the policy was taken out. He said he hadn't been warned that his car would be taken to the salvage yard.

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 can see that it's now a year since the accident when Mr M's car was damaged. I can understand that he feels frustrated that his car is yet to be repaired. I was sorry to hear about the effect the claim has had on Mrs M's health and that the claim has caused her stress.

Mr M said he was unhappy with the valuation Aviva placed on his car. But I can't consider that here as he has yet to complain about this to Aviva to give it a chance to respond. My consideration here is limited to those complaints raised and responded to by Aviva.

Mr M complained that Aviva wouldn't include the modifications to his car in its settlement offer. He said he'd disclosed these to Aviva, but it hadn't recorded them correctly on his policy.

I'm satisfied 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.

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. 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 reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it is entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

Aviva thinks Mr M failed to take reasonable care not to make a misrepresentation when he stated in his application that his car didn't have any modifications. And I've looked at the question he was asked when he took out the policy and agree he failed to take reasonable care. This is because he was asked "*Have any modifications been made to this vehicle?*" And then a modification is defined. And I think this was a clear question asked by Aviva.

Mr M didn't disclose any modifications, but he had disclosed them to a previous insurer. So I think he should have reasonably understood what was meant by them. I can see that his car had several after-market modifications. These weren't stated on the policy schedule and so Mr M didn't correct this error as he should have done. And I think this means Mr M failed to take reasonable care not to make a misrepresentation when he said his car didn't have any modifications.

Aviva has provided evidence which shows that if Mr M had not made this misrepresentation it wouldn't have offered cover at all. This means I am satisfied Mr M's misrepresentation was a qualifying one under CIDRA.

I don't Mr M's misrepresentation was a reckless or deliberate misrepresentation as I haven't sufficient evidence to show this. And so I think it was careless and, as Aviva wouldn't have offered cover at all with the modifications disclosed, then it's entitled by CIDRA to avoid the policy.

But Aviva didn't do this. It gave seven days' notice of cancellation of cover for the car. And it said it would cover the claim for the car's total loss, without including the modifications. This means it offered to settle the claim proportionately, which I think was very fair and reasonable. And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Aviva to rely on it to settle Mr M's claim produces the fair and reasonable outcome in this complaint.

Mr M was unhappy that his car was taken to a salvage yard without his consent. Aviva said its garage would have told Mr M that the car was being taken to the salvage yard. I haven't

been provided any evidence to show this. But I think it's normal procedure when a car is declared a total loss and so repairs wouldn't be carried out. So I can't say Aviva did anything wrong in this.

Unfortunately, the car was further damaged whilst at the salvage yard. The salvage agent replaced the damaged windscreen and offered Mr M £580 for the cost of repairs for the further damage caused. Mr M said this wouldn't cover the cost of repairs to the damage caused and expensive items were removed from the car. But I haven't seen any evidence to show this. Our Investigator has already suggested that if Mr M thinks the repairs for this damage would cost more then he should provide evidence to Aviva for it to consider. I think that's fair and reasonable.

Aviva has agreed that its communication has been poor. I can see that Mrs M did explain early on that she was finding the claims process stressful. And I think Aviva could have been clearer about what was happening and why. To put things right, Aviva agreed to record the claim as non-fault for notification only, even though it hadn't yet recovered its outlay from the other insurer. It had already waived the policy excess and allowed the No Claims Discount (NCD). So I think that fairly restores Mr M's position for any communication and other issues.

Aviva also offered Mr M £150 compensation for the trouble and upset caused by its poor communication. I think that's in keeping with our published guidance for the level of impact this caused. I can't consider compensation for Mrs M additionally as she isn't a named driver on the policy. So I think that's fair and reasonable, and I don't require Aviva to do anything further.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 July 2024.

Phillip Berechree
Ombudsman