

The complaint

Mr D complains that Aviva Insurance Limited (Aviva) unfairly cancelled his motor insurance policy without consideration of his financial circumstances.

What happened

Mr D says Aviva increased his insurance premium mid-policy because he'd given inaccurate information about where his car was kept overnight. He says the address he gave for his original arrival in the UK was also wrong. Mr D agreed to the increased premium. But Aviva failed to process it correctly. So, he continued to pay the lower, original premium. Aviva eventually contacted him to collect the missing premium payments. He says it didn't consider his financial circumstances and threatened to cancel the policy, which it eventually did.

Mr D says he had to sell his car at a loss. This made travel more difficult. He says because of Aviva's actions his mental health has suffered.

The administrator for Mr D's policy responded to his complaint. It says his insurer (Aviva) wanted to validate some of the information Mr D provided in his application in April 2023. It says inaccurate details were identified, including where the vehicle was kept and Mr D's UK residency date. When the corrections were made an additional premium was applied for £1,478.23. This required additional payments from Mr D. Aviva acknowledges these payments weren't set up correctly on its collections system.

The administrator says Mr D was contacted by letter in July 2023. Informing him the additional premium wasn't being paid. It says Mr D made contact on 18 December. It informed him he'd need to pay £306.73 alongside his existing monthly payment. He contacted it again on 27 December. An offer was made to bring the finance in-house so Mr D wouldn't have to pay interest on the amount owed. The administration fee was waived, and a payment plan offered for the remaining balance of £1,953.48 to be paid in four monthly instalments. Mr D didn't agree to this, so the policy cancelled on 2 January 2024.

Mr D didn't think he'd been treated fairly and referred the matter to our service. Our investigator upheld his complaint. He contacted Aviva who confirmed there was no delegated authority for the administrator to deal with Mr D's complaint. So, he asked Aviva for its response and any further information it wanted to provide. But it didn't respond.

Our investigator says Mr D agreed to pay the additional premium. He says he was also made aware that he could've cancelled the policy rather than pay the increased amount. He says Mr D could've contacted Aviva sooner when the additional funds weren't collected from his bank account.

Our investigator thought Aviva acted reasonably in offering Mr D time to pay and by taking the debt in-house to avoid interest payments. He didn't think it was unfair to cancel the policy. But because of the mistake in it failing to collect the additional premiums he says Aviva should amend how the cancellation was recorded. This should show as an instruction from Mr D. This avoids the negative impact of having an insurance policy cancelled by his insurer. Our investigator says Aviva should pay Mr D £300 to acknowledge its part in the

inconvenience and upset he experienced.

Mr D accepted our investigator's findings. Aviva didn't respond. Because an agreement wasn't reached the matter had been passed 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.

Having done so I'm upholding Mr D's complaint. Let me explain.

The relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). Under CIDRA Mr D must take reasonable care not to make a misrepresentation when taking out insurance. If Mr D doesn't do this, CIDRA allows an insurer to take certain actions, assuming the misrepresentation is a qualifying one. A qualifying misrepresentation is where the insurer wouldn't have provided cover at all, it would only provide cover under different terms, or it would only provide cover for a higher premium.

I asked Aviva to show the questions Mr D was asked and the answers he gave. More specifically the question about where his car was kept overnight and the question about his address when he first came to the UK.

The policy administrator has supplied screenshots of the questions Mr D was asked when applying for his policy online via a comparison website. The question about UK residency asks, "*Have you continuously lived in the UK since birth?*". Additional information is detailed under this question that explains insurance providers need to know how long a person has lived in the UK on a continuous basis, without any breaks lasting six months or longer. I can see from the statement of fact (SOF) document Mr D was sent, next to UK residency, that his date of birth is listed. I think this reasonably shows that Mr D answered 'yes' to this question, indicating he'd been a UK resident since birth.

Another of the questions says, "*Where do you keep your car during the night?*". There are nine possible responses. From the SOF document Mr D selected that his car was garaged overnight. The question asks if the garage is locked or unlocked. It's not clear, which response Mr D gave as this isn't detailed on the SOF document. However, the records show that Mr D kept his car in a carport not a garage. There isn't an option for a carport in the online application.

The SOF document under the heading "*Important Notes*" says that failure to supply accurate answers can result in the policy being cancelled, treated as though it never existed, or claims can be rejected or not fully paid. It says it's Mr D's responsibility to review his answers. If any information is incorrect, incomplete, or if he is anyway unsure he should contact his broker immediately.

I can't see that Mr D contacted his broker, or Aviva, to inform it of the inaccurate information he'd provided. Based on this evidence I think Mr D did fail to take reasonable care not to make a misrepresentation.

I asked Aviva to provide its underwriting criteria to show that if correct information was provided this would result in a higher premium. But it didn't respond with this information. Clearly, the premium increased as a result of the updated information about Mr D's UK residency and where his car was kept overnight. But Aviva hasn't shown this was done fairly using its established underwriting criteria. Because of this it hasn't been shown that a qualifying misrepresentation occurred. So, the remedies under CIDRA aren't available for

Aviva to apply here.

Under CIDRA the options available would depend on whether a misrepresentation is careless, reckless, or deliberate. I've listened to the call recording between Mr D and the policy administrator near the time the policy was taken out. I think he gave a reasonable explanation for the discrepancy with his first residency address. Although it's clear he provided inaccurate information. I think Mr D's response to the garaging question was a careless mistake given his car was kept in a carport as opposed to a garage. Based on this I think Mr D's misrepresentation was careless, as opposed to reckless or deliberate.

If the CIDRA rules applied Aviva could cancel the policy in these circumstances. Alternatively, it could keep the policy in place and settle any claims on a proportional basis. CIDRA doesn't give the option of charging a higher premium. However, this can be of benefit to a consumer, so we don't think this is unfair. This is as long as Mr D was clearly aware of his options, which included the opportunity to cancel his policy without paying additional premiums.

Mr D spoke with the policy administrator to discuss the discrepancy with the information he'd given. This call was recorded on 5 April 2023. I've listened to the call. It was made clear when using the correct information that Mr D's premium was going to increase significantly. The agent told him he'd check the increase with his insurer. Cancellation was discussed. Mr D wanted to know he had the option of cancelling within the statutory 14-day period.

I can see from the policy administrator's submissions that further calls took place on 26 and 27 April 2023. The additional premium was confirmed as £1,478.23. An email was sent confirming that a further deposit for £251.30 was required and Mr D's monthly payments would increase to £403.47 over 10 months. On 27 April Mr D called to agree with the amendments.

Based on this information I think Mr D was aware that he could've cancelled his policy instead of agreeing to an increased premium. He chose to pay the increased amount. The payments weren't collected as agreed. This was Aviva's fault as this information wasn't passed on to the finance company. But Mr D knew his premium was increasing by a significant amount. He should reasonably have been aware that the payments weren't being collected in full when this wasn't collected from his bank account. He didn't bring this to Aviva's attention. And the business didn't identify the issue itself until eight months later in December 2023.

I've read the notes provided by the policy administrator that show the options it gave to Mr D in order to make up the missing payments. In the circumstances I think it's fair that it offered to bring his account in-house to avoid further interest payments. It also offered to allow the final three-monthly payments to be collected over four months. Again, I think this was reasonable in the circumstances. From the notes provided Mr D agreed to pay £250 during a call on 28 December, followed by three monthly payments of £450. However, the notes show there was some confusion as Mr D wasn't aware that the usual Direct Debit payment also needed paying. He said he couldn't afford this. The cancellation was postponed to 2 January 2024 at this point. The policy was subsequently cancelled as Mr D didn't provide the payment he was asked to.

Having reviewed this information carefully I think Aviva did reasonably consider Mr D's concerns around his ability to pay. It offered reasonable payment options. But ultimately he'd agreed to pay the increased premium in April 2023. His policy confirms that if instalment payments aren't received on time all unpaid amounts become immediately due. In these circumstances I think Aviva acted fairly to try and assist Mr D. We expect cancellation to be a last resort given the impact this can have. But from what I've read Aviva did take

reasonable care to find alternative payment options that could work for Mr D. Unfortunately, he was unable to pay the amount he owed in the timeframes offered, and so the policy was cancelled.

However, it's clear that Aviva's failure to pass information onto the finance company contributed to the issues described. Had it communicated the amended payments to the finance company as it should've done, the arrears wouldn't have built up. As discussed Mr D could've acted to mitigate the issue far earlier. But I think Aviva should take some responsibility for the impact this has had on him. Mr D was clearly caused significant distress due to not being able to afford to pay his insurance. This meant he was unable to drive from when the policy was cancelled in January 2024. He was also inconvenienced when having to call Aviva to try and resolve these issues. In these circumstances I agree with our investigator's view that it should pay Mr D compensation. I think £300 is fair.

A cancellation record can have a detrimental impact on the cost of future insurance. I don't think this is fair on Mr D in these circumstances. Aviva was responsible for the error in not informing the finance company of the premium increase. Because of this I think it's reasonable that it changes this record to show Mr D cancelled the policy. Aviva can write to Mr D to confirm this.

I've thought about Mr D's comments that he was forced to sell his car as a result of Aviva's mistake. I'm not persuaded by this. Mr D didn't provide correct information in his application. This resulted in an additional premium. Mr D agreed to pay this higher amount. But ultimately he didn't pay what was agreed. I think compensation is due from Aviva for its part in the distress and inconvenience caused. But it was Mr D's decision to sell his car. Whether he did so at a loss or not, I don't think Aviva can reasonably be held responsible for this.

Having considered all of this I don't think Aviva treated Mr D fairly when it failed to communicate the additional premium to the finance company. To put this right, it should pay Mr D £300 compensation and amend the cancellation record to show he cancelled the policy.

If Aviva intends to collect any outstanding balance relating to Mr D's policy it should consider his ability to pay when doing so.

My final decision

My final decision is that I uphold this complaint. Aviva Insurance Limited should:

- pay Mr D £300 compensation for the distress and inconvenience it caused him; and
- write to Mr D confirming the cancellation record has been amended to show he cancelled the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 December 2024.

Mike Waldron
Ombudsman