

The complaint

A limited company, which I will refer to as W, complains about the decision of Aviva Insurance Limited to decline its commercial motor insurance claim.

What happened

The following is intended only as a brief summary. Additionally, for the sake of simplicity, I have only referred to W and Aviva, even where other parties were involved.

W operates in the motor trade and holds a motor trade insurance policy underwritten by Aviva. When the policy was taken out in April 2024, the statement of fact completed at the time listed the types of vehicle W wanted to be insured.

This showed that W wanted to insure nine vehicles considered to fall into the category “Other Vehicles – All others” and two in the category “Goods Carrying Vehicles not used for hire or reward over 7.5 tonnes GVW”. A zero was entered next to the other potential categories, including “Personally Owned Vehicles belonging to Directors...” However, one of W’s directors did own a vehicle that W says was used for commercial purposes and that W wanted to insure under this policy.

In May 2024, the personally owned vehicle was stolen and has not been recovered. W contact Aviva to claim for this loss, but the claim was declined. Aviva said that this vehicle was not one insured by the policy, and so no claim could be considered in relation to it.

W complained about this decision, bringing its complaint to the Financial Ombudsman Service. Our Investigator recommended the complaint be upheld. He thought that the failure to add the vehicle to the policy, at the time it was taken out, ought to be treated as a breach of the duty of fair presentation. And that this meant the appropriate action for Aviva to take was to follow the remedies set out in the Insurance Act 2015. And that, as Aviva had confirmed the policy would have been provided had this vehicle been part of the risk W had said it wished to cover, it was appropriate for Aviva to reconsider the claim based on such an amended policy. Our Investigator said it was reasonable for any settlement that is ultimately due to be proportionally reduced in line with this Act.

Aviva did not agree with this outcome. So, this complaint has 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 have come to the same outcome as our Investigator, largely for the same reasons.

Aviva has not responded with any detailed comments of why it disagrees with our Investigator’s opinion on this complaint. However, I do appreciate Aviva’s general position

here. It has not been asked to provide cover for this vehicle and yet is now being asked to settle a claim relating to it. It is understandable that an insurer would not wish to settle a claim for something it was not covering. And, generally speaking, I would be inclined to agree with this position in most cases.

However, it is necessary to think about the circumstances of each individual case, and to consider whether an insurer's position is fair and reasonable in those circumstances.

The policy in question is not one which provides cover for specific vehicles that have been defined at the point of sale. It is a motor trade policy, where it is possible that many of the relevant vehicles that are covered change over the course of the policy. These vehicles are not separately listed on the policy documents. Only the category in which they fall is listed. It is clear that W had not listed there being a vehicle under the "Personally Owned Vehicles..." category. But this merely seems to be an oversight, rather than because there was no actual intention to cover this vehicle.

It is notable that Aviva has confirmed that if W had correctly completed the paperwork, cover would have been provided. And that the additional cost of this would be around 0.15% of the overall policy premium. I am not persuaded that a policyholder would choose not to pay an additional £30 for cover for a particular vehicle when they are already paying close to £20,000 for broader cover.

W has said that the vehicle was used by its director for business purposes. And I am persuaded that risks related to this vehicle were risks that W would have sought to cover.

As I say, I have not set out all of the circumstances of this complaint in this decision. But, taking everything into account, I consider that it would be fair and reasonable, in the particular circumstances of this case, to consider this to be a situation where the risks W intended the policy to cover included this personally owned vehicle.

That W failed to disclose this risk to Aviva would amount to a breach of the duty of fair presentation under the Insurance Act 2015. And I consider it is fair and reasonable for Aviva to be able to apply the remedies available to it under this Act. However, I do not consider the breach would fall into the category of deliberate or reckless. So, this would lead to the claim being considered under the terms that Aviva would have applied had there been no breach, and potentially a proportionate settlement of the claim.

Putting things right

Aviva Insurance Limited should reconsider W's claim on the basis that the vehicle is covered.

My final decision

My final decision is that I uphold this complaint. Aviva Insurance Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 13 January 2025.

Sam Thomas
Ombudsman