

The complaint

Mr D has complained about the service received by By Miles Ltd ('By Miles') and has complained that it didn't honour the excess amount which it first offered when he was purchasing a motor insurance policy.

What happened

Mr D bought a motor insurance policy online in June 2021, after By Miles offered an excess on his policy of £300. Following payment of a sum of money by Mr D, a document was sent to him and this showed an excess of £1,600. By Miles Ltd also sent an e-mail to Mr D and other customers, stating there had been a technical error in the initial offer Mr D had received and accepted.

Mr D wanted By Miles to honour its initial offer of an excess of £300 and to do the same for other customers affected by the same issue.

Our investigator didn't think that By Miles needed to do anything else or to honour the £300 excess. He thought that By Miles' actions had provided a fair and reasonable solution to the problem, because it notified Mr D of the problem two weeks before the policy started and then added a further 21 days to allow time for Mr D to arrange an alternative policy.

Mr D remained unhappy with the outcome of his complaint and considered that the agreement between By Miles and himself was legally binding. The matter was therefore referred to me to make a final decision in my role as Ombudsman. In February 2022, I issued a provisional decision for this complaint and explained why I was minded to partly uphold Mr D's complaint regarding the service quality element only, as follows; -

'I'm minded to partly uphold Mr D's complaint in terms of the upset and inconvenience caused to him by By Miles' error. I'm not minded however to require By Miles to honour the excess amount which it first offered when Mr D was purchasing a motor insurance policy. My reasons for this are as follows.

Mr D noted the 'technical glitch' but stated that the terms and conditions By Miles offered, and that he'd accepted and paid for, were legally binding. He said that if the underwriter wouldn't change its view, then By Miles was responsible as an insurance intermediary.

By Miles stated that the excess shown on the online site at the time of buying the policy was wrong, due to an error, and it apologised for its mistake. It said that the correct excess was reflected in the policy schedule it emailed to Mr D. As an apology, By Miles stated that it would add £50 in free miles' credit to his account if Mr D wished to continue with his policy.

By Miles also provided the option for Mr D to cancel his policy, refund any premium paid, waive the cancellation fee and arrange for his 'miles tracker' to be returned at no extra cost. It said that the compulsory excess was set by its underwriters and that it was subject to restrictions on how it was able to price a policy. It stated that its policy and contract had a compulsory excess of £1,600 and if Mr D didn't confirm cancellation, the policy would remain open. By Miles informed Mr D that, in all the circumstances; 'cancellation of the policy may

be the best way forward'. It also considered that it had acted in a flexible manner and essentially provided free cover to allow enough time to allow Mr D to find suitable cover with another provider.

I've carefully considered what both By Miles and Mr D have to say, and I've concluded on a provisional basis that By Miles' error caused Mr D inconvenience and upset. He had to make alternative insurance arrangements and he considered that it reneged on its agreement. By Miles did offer £50 in free miles due to the error, however this offer would only apply if Mr D continued with his policy. In the circumstances, I find, on a provisional basis, that By Miles should pay Mr S £100 compensation. I consider that this would provide a fair and reasonable outcome to this aspect of Mr D's complaint.

With regard to By Miles declining to 'honour' the initial excess amount, I've provisionally concluded that By Miles hasn't acted in an unfair or unreasonable manner. I'm satisfied that the solutions offered in the light of its error were fair and reasonable. It had identified and acted upon an error in its systems and promptly offered reasonable solutions for dealing with this error. I've noted in particular that Mr D was notified of the error two weeks before his policy had started. He was also given a further 21 days from the original deadline to consider options. This, together with the modest sum in compensation, places Mr D back into the position he would have been had the error not occurred.

I appreciate that Mr D feels strongly about this matter and that this decision may come as a disappointment to him. I don't consider however that By Miles has acted unfairly or unreasonably by declining to implement the £300 excess which it had offered in error. I provisionally conclude that By Miles recognised its error and took steps which, together with the proposed sum of compensation, provides a fair and reasonable solutions to remedy that error.'

In my provisional decision, I asked both Mr D and By Miles if they had any further comments or evidence which they would like me to consider before I made a final 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.

By Miles hasn't indicated that it has any other final points which it would like to make. Mr D makes two further points however: -

Firstly, Mr D states that the provisional decision was mute on the legal point which he considered to be of great importance. He was of the view that the agreement was legally binding. He thought that it was not enough 'to make' things fair or give the consumer a way out. Mr D expected the decision to focus on the legal aspect including consumer laws and rights and asked that this be included in the final decision.

I appreciate Mr D's concerns. I can confirm however that the role of this service is to resolve complaints based on what we think is fair and reasonable in the specific circumstances of the case as we provide an informal alternative to the courts. This doesn't prevent parties from pursuing complaints through the courts in order to explore the detailed legal arguments which arise from the facts of particular cases.

In basic terms, a contract is formed when there is an offer, acceptance, consideration, and an intention to be legally bound. However, even where these elements can be made out, a contract can be voided under common law rules if a mistake is made by a party or parties in

particular situations. There are also in certain circumstances, other legal remedies which may be available to parties if they enter a contract by mistake.

In this case, whilst noting Mr D's point, a court would be the appropriate forum to make detailed legal submissions in order to establish a strict legal determination on the facts. I'm satisfied however, on the available evidence, that the provisional decision provides a fair, reasonable and proportionate solution following admission by By Miles of its mistake.

Secondly, Mr D states that the compensation should be in the form of a refund and not free miles, as he may never use those. I agree with Mr D, and it is for this reason that I require By Miles to pay the sum of £100 in compensation for the service quality issue rather than free miles.

Subject to the points noted and accepted as above, in all the circumstances, I've concluded that the provisional decision provides a fair and reasonable outcome to the matter and I partially uphold Mr D's complaint as follows.

My final decision

For the reasons given above, I partially uphold Mr D's complaint regarding the service quality element only, and to require By Miles Ltd to pay to Mr D £100 compensation for the upset and inconvenience caused by its acknowledged error in this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 19 April 2022.

Claire Jones
Ombudsman