

The complaint

Mr A is unhappy that UK Insurance Limited (UKI) increased his commercial motor insurance policy premiums mid-term.

What happened

Mr A took out a commercial motor insurance policy through UKI in March 2023. During the inception call he informed UKI that he'd been in an accident the previous year and that liability was in dispute.

UKI set up the policy with Mr A and the third-party driver recorded as jointly at fault for the accident. The advisor told Mr A to contact it once liability had been settled and it would amend the policy. UKI also applied Mr A's two years of no claims discount (NCD) when it set up the policy.

UKI later made a mid-term adjustment which increased Mr A's policy premiums. Mr A is unhappy with this. He says he told UKI about the accident and it did not advise him that there was a risk of his premiums increasing. He says he could have obtained cheaper cover elsewhere if he knew.

Our investigator considered this complaint and thought it should be upheld. He said Mr A was transparent about the accident, but UKI weren't clear that the policy premiums could increase. He said UKI's advisor only mentioned the possibility of a refund, not a price increase. He thought UKI shouldn't have applied the NCD given they knew liability was in dispute. He said Mr A could have sought alternative cover if UKI had been clearer. Our investigator ultimately didn't think UKI should amend the cost of the policy as he accepted it was a true reflection of the risk. But he said UKI should pay Mr A £200 compensation for the distress and inconvenience he had been caused.

Neither side accepted our investigator's findings. Mr A didn't feel £200 was sufficient compensation. He said he only chose UKI as they were the cheapest quote. But the next cheapest was only £80 more, which would have been significantly more favourable than the price he ended up having to pay UKI.

UKI said it was correct to apply the NCD as it was a true reflection of what Mr A held at the point of inception. It says Mr A gave the impression that he wasn't at fault for the incident, which is why the advisor only mentioned a potential refund rather than a potential increase. But ultimately it said Mr A had benefited, rather than suffered detriment, as he received a cheaper price on his policy for a period of time, before the premiums were accurately recalculated after liability was decided.

Because no agreement had been reached, the complaint was passed to me to decide.

I was minded to reach a different outcome to our investigator. So, I issued a provisional decision to give the parties the opportunity to respond, before I reached a final decision. Here's what I provisionally decided:

“What I’ve provisionally 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 minded to reach a different outcome to our investigator. So, I’m issuing a provisional decision, to give the parties the opportunity to respond, before I reach my final decision.

I’ve listened to the inception call between Mr A and UKI. I agree Mr A was transparent about the accident and that liability was currently disputed. Because of this, I do think the advisor could have explained the possibility of a premium increase if the accident was later recorded as fault against Mr A. But I also agree that Mr A suggested he wasn’t at fault for the accident by saying the other driver ran into him, so I can understand why the advisor only explained the possibility of a refund if Mr A was found not at fault.

Ultimately, what I need to decide is whether UKI made an error and, if it did, whether Mr A has suffered detriment as a result. And all things considered, I do agree that the advisor should have highlighted the possibility of a potential premium increase, as well as a potential refund. Because he didn’t, I’m satisfied UKI made an error, so I’ll next consider whether Mr A has suffered any detriment as a result.

When setting up the policy, UKI recorded both parties at fault for the accident. So, there was likely no change to the premium based solely on how the claim was finally recorded, because the fact Mr A was jointly at fault had already been factored into the price when the policy was inception, and whether being jointly or individually at fault, Mr A was recorded as at fault either way. The issue appears to be the application of the NCD whilst liability was being disputed.

I’ve thought carefully about this issue. Having done so, I don’t think I can reasonably conclude that UKI treated Mr A unfairly by applying his NCD. I say this because UKI was clear with Mr A that it was applying his NCD to the policy because liability had yet to be determined. Mr A didn’t raise any concerns about this, or suggest he was unhappy with it being applied.

UKI has also said the NCD being applied at inception meant that the policy premium Mr A was charged up to the mid-term adjustment was cheaper than it would otherwise have been had his NCD not been applied. So, it says Mr A actually benefited from a cheaper policy, for a period of time.

I haven’t been provided with evidence from UKI to support that the increased premium was only charged on the remaining term of the policy, rather than retrospectively covering the full term. So, I’d invite UKI to provide this evidence in response to my provisional decision. But even if that isn’t the case, and the increased premium was applied to the full policy term, I’m still not persuaded that Mr A has suffered a financial detriment. I’ll explain why.

Mr A has argued that, had he been given the full cost of the policy without the NCD and been told it was possible that he could end up needing to pay that amount later, that he’d have sourced a cheaper policy elsewhere. But I haven’t been provided with any evidence to support that Mr A could have actually obtained cheaper cover elsewhere. So, in the absence of such evidence, I can’t reasonably conclude that Mr A has suffered any financial detriment as a result of UKI’s error.

While I'm not persuaded that Mr A has suffered any financial detriment, I do accept that he has suffered from a loss of expectation as a result of the advisor not being clearer. It would have been understandably disappointing and upsetting to have to pay a significant additional premium which he wasn't forewarned about – even if the premium was correct and fairly due. So, to fairly put things right, I think UKI should pay Mr A £100 compensation for the impact of the loss of expectation its error during the sales call caused.”

I asked both sides to send me any further evidence or arguments they wanted me to consider, before I reached my final decision.

Both sides provided responses explaining why they disagreed with my provisional findings.

To summarise, Mr A said:

- I was incorrect to state in my provisional decision that he had been determined to be at fault for the accident. This is still in dispute.
- UKI did not make him aware it was adding his full NCD, only a suspended NCD.
- He finds it hard to accept my conclusion that in the absence of evidence that he could have got a cheaper policy elsewhere, that he hasn't suffered any financial detriment. He says it's unreasonable to believe that no other insurer came within £453 of UKI's quotes or to expect him to have retained quotes which he didn't accept and which were given to him over the phone.
- It seems I've implied that he attempted to mislead UKI when describing the circumstances of the accident as the other driver driving into him, despite this being an accurate description of events and despite him being clear that liability was disputed.

And UKI said:

- The policy was rated correctly at the time, and it would have been wrong not to note the NCD.
- Its risk rating is built into the system so the call handler wouldn't have known how a mid-term NCD adjustment would have impacted the premium until the adjustment was put through the system.
- Our service would have found against them had they not input the NCD at the point of inception.
- No insurer would be able to confirm how a premium would be affected at different times, and sometimes, such a change may make no difference at all.
- All its documents make policyholders aware to notify it of any changes and that it may assess the premium immediately or at the next renewal.
- The price it has charged has been reflective of the risk at each stage and it has followed the terms and conditions.

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've also thought carefully about the responses from both sides. Having done so, it's become apparent that one of my provisional findings was incorrect, and so I've changed my mind on that element of Mr A's complaint.

However, the overall outcome I've decided on remains the same as previously set out. I'll explain why addressing each sides response in turn.

Mr A's response

Mr A has pointed out that I was incorrect to say he had been determined to be at fault for the accident, and that this liability decision is what resulted in his premium increase. Mr A says his dispute is still ongoing and he is waiting for his day in court.

I'm sorry that my statement was incorrect. I was under the impression it was the outcome of the claim which resulted in Mr A being charged the higher premium. However, Mr A has now explained that what actually prompted this, was that he was asked to provide proof of his NCD shortly after the point of sale, and at that point it became apparent that UKI had provided its quote with the full NCD allowed, rather than the NCD being suspended.

UKI maintains it has followed the correct process. But in light of Mr A's clarification, which I have also verified with UKI, I don't agree. I say this because Mr A told the original advisor during the sales call that his NCD had been suspended. So, as it was this same fact which resulted in the NCD being removed mid-term, I fail to see why the full NCD was included from the outset.

Based on the above, I'm satisfied that in addition to the advisor not giving clear enough explanations about the possible impact to Mr A's premiums, that the advisor also made an error in including the NCD in the first place.

I've thought carefully about whether this additional error from UKI should impact the award I provisionally decided to make. But while I'm now persuaded UKI made a larger error, our awards are not punitive. Instead, we make awards based on the impact a business's error has had on the customer. And here, despite the larger error, I think the impact is the same – the loss of expectation Mr A suffered when his premium increased and the loss of opportunity to source an alternative policy.

I know Mr A is unhappy with my provisional conclusions around whether he could have found cheaper cover. And to be clear, I haven't said Mr A definitely could not have found a cheaper policy. What I've said is that I haven't been provided with any evidence to support that he could have. And in order for me to fairly and reasonably hold UKI responsible for a financial loss, I would require strong evidence to support that such a loss occurred.

Mr A has explained that aside from UKI's policy he was quoted for other policies which were only slightly more expensive. But without evidence of these quotes, I can't know that they too wouldn't have included the full two years NCD, or that they were quotes for an equivalent level of cover.

I fully appreciate Mr A's reasons for not retaining any verbal quotes he might have received particularly quotes he elected not to proceed with. But this doesn't change the fact that in the absence of evidence to support that he could have got a cheaper policy elsewhere, it wouldn't be fair to expect UKI to cover an alleged, unsubstantiated and crucially, unquantifiable financial loss. So, my decision on this point ultimately remains the same.

That said, while I've not been persuaded that UKI caused Mr A a financial detriment, I am persuaded that UKI's errors in setting up the policy in the way it did, and not fully explaining the potential impact to Mr A's premium, have undoubtedly caused a loss of expectation. I set out in my provisional decision that I thought it would have been upsetting and frustrating for Mr A to be asked to pay a significantly higher premium, which he wasn't expecting – even if the increased premium was correct and due.

I think the loss of expectation Mr A has suffered is ultimately the same, whether it was caused by the poor explanations of the advisor or the advisor including the NCD in error. So, to fairly put things right, I remain of the view that UKI must pay Mr A £100 compensation for the distress and inconvenience he has suffered as a result of its errors.

Finally, Mr A has suggested that I implied he sought to mislead UK when describing the incident, based on a sentence I included in my provisional decision.

I'd like to assure Mr A that it was certainly not my intention to make any such implication. I don't doubt that Mr A's description of the accident was his genuine recollection and it's not for me to make a determination about who was at fault for the accident as that isn't the subject of this complaint. I was merely highlighting that as Mr A described the accident as being the third-party driver's fault, I could understand why the advisor might have only thought to mention the possibility of a refund.

But crucially, irrespective of the statement I made, my ultimate conclusion was, and remains, that the advisor was not clear enough and that this caused Mr A an avoidable loss of expectation.

UKI's response

All of UKI's points seem to focus on whether or not it was correct to include the NCD, and whether or not it could have known for certain that an adjustment would have resulted in a price increase. But in my provisional decision, I didn't dispute that UKI was correct to include the NCD and I didn't suggest it would have known there would definitely be an increase.

In my provisional decision I explicitly said that I didn't think UKI had treated Mr A unfairly by adding the NCD. However, for the reasons explained in the above section, my decision on this point has changed. Mr A was clear from the outset that the NCD was suspended, so as that's the very same reason the premiums were later amended, I think it's now clear that it was an error to include the full NCD at the point of inception.

In terms of what UKI would have known during the inception call, I didn't suggest it ought to have known exactly what would happen to the premium depending on each of the potential outcomes to Mr A's claim. But I do think the advisor could have done more to manage Mr A's expectations about the potential outcomes, so that he could fully understand. Instead, the advisor only mentioned the potential for a premium refund and not a premium increase. I don't think this was clear enough.

Ultimately, I remain of the view that UKI's explanations during the inception call weren't clear enough. And I'm now of the view that UKI shouldn't have included the full NCD to begin with either. As a result of these errors, I think Mr A suffered an avoidable loss of expectation. So, I'm still going to direct UKI to pay Mr A compensation for this.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mr A's complaint in part.

UK Insurance Limited must pay Mr A £100 compensation for the distress and inconvenience it has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 23 February 2024.

Adam Golding
Ombudsman