

The complaint

Mr W complained that U K Insurance Limited trading as NIG wrongly increased his premium on his commercial vehicle insurance policy.

What happened

When Mr W took out his policy with UKI they asked him about his insurance claim history. UKI later discovered from the insurance claims database that one of his claims he had disclosed had not been finalised (or settled) by his previous insurer. This meant it was still an “open” claim, which insurers treat as a fault claim. UKI said that if they’d known that at the start, Mr W would have been charged a higher premium and would not have been eligible for No Claims Discount (NCD) protection. So they charged him the extra premium and removed the NCD protection.

But Mr W said he had disclosed the relevant claim and he didn’t know, and couldn’t be expected to know, what open claim or settled meant. He wanted UKI to refund the extra amount they’d charged, refund what he paid for the NCD protection, and compensate him too.

The investigator thought UKI hadn’t treated Mr W unfairly. Mr W didn’t agree and I was asked to decide. I issued a provisional decision on 26 February 2024 upholding the complaint. Mr W accepted my decision, but UKI disagreed, and I deal with their comments below.

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.

In my provisional decision I said as follows:

“ Mr W said that when he took out his policy with UKI, he disclosed all his previous claims. These were a fault claim in 2019 and another in 2022, which he felt wasn’t his fault. UKI later discovered from the insurance database that the 2022 claim, with a previous insurer, was still open. In other words Mr W’s previous insurer was still dealing with it, and they hadn’t decided who was at fault.

As the investigator explained to Mr W, it’s standard practice in the insurance industry for an open claim to be treated and recorded as a fault claim until who’s at fault is agreed between the insurers and the claim is closed.

UKI said that Mr W had to pay an additional premium to reflect what UKI would have quoted and charged him from the start if they’d known that the 2022 claim was still open and so was a fault claim for their purposes.

But Mr W said that he had disclosed the 2022 claim to UKI, and he couldn’t be expected to know how UKI would treat it. He felt that UKI were charging him more to punish him for not knowing this, or because they thought he hadn’t been truthful. I can see that he found the

situation frustrating.

UKI did accept that Mr W disclosed the 2022 claim, and it's mentioned in his policy documentation, so that's not in dispute. I don't think that UKI believed that Mr W had been untruthful. However I can see why he felt that, given the tone of their letter to him when they discovered that the 2022 claim was still open.

It's simply that when an insurer takes on a new policy they assess the risk to them , according to the information they are given. UKI have shown us that if they'd known about the open claim, Mr W would have been charged Mr W the additional premium at that time, and not been given the NCD protection.

But if UKI needed to know if a claim was still open, because they would treat that as a fault claim, it's up to them to ask questions which allow the consumer to disclose that.

I've looked what UKI asked Mr W about previous claims when he took out the policy and what he answered. Mr W took out the policy via an online insurance price comparison site. UKI have shown us that when seeking a quote the site asked if in the last five years, he had had or caused any accidents, claims or damages. It said to tell them about it even if they didn't claim and no matter whose fault it was.

There was then a drop down list of pre-set answer options. These included "*Incident - no claim made*" and "*Accident - not settled*", along with other options covering whether the driver was at fault or not.

Mr W answered "*Incident - no claim made*" about the 2022 claim because he thought he wasn't at fault for the incident, and no claim had been made.

But UKI interpreted his answer as meaning that this was a finalised no fault incident, rather than a still open claim with his previous insurer in which fault hadn't been decided. UKI thought he should have answered "*Accident - not settled*" instead.

But I don't think that's reasonable. I don't think that any of the pre-set drop down answer options, or the explanatory wording next to it, reasonably suggested to Mr W that he should choose "*Accident - not settled*" if he had a claim that was still open. UKI might think "*not settled*" means still open but I don't think that would have been clear to a consumer. So it was unfair of UKI to make Mr W responsible for not disclosing something they didn't give him the opportunity to disclose. If UKI wanted Mr W to disclose that he had claim in which fault had not been finally decided by a previous insurer, they should have asked a question which clarified that and signposted a drop down answer option which clearly said that.

Mr W did disclose the 2022 claim to UKI and paid the premium UKI offered. I don't think it's reasonable for them to later charge him more. That's because I don't think UKI asked Mr W the right question or provided a clear answer option. If Mr W had known when he took out the policy what UKI's correct premium would be, he could have chosen not to accept it and to choose alternative insurance instead, but he lost that opportunity because of UKI's actions.

So I don't think have acted reasonably and I think they should refund the extra premium he paid for the relevant premium year, plus interest. If UKI had known the correct position Mr W would not have been eligible for the NCD protection, but UKI should refund him the extra amount he paid for that protection, plus interest. I also think that because this caused Mr W some inconvenience as above, that they should pay him compensation of £150. "

Mr W accepted my provisional decision, but UKI disagreed with it. They considered that they were not responsible for the questions the online comparison site provider asked of Mr W when he sought quotes. However ultimately UKI have to show that Mr W was given the option to tell them the claim was still open but didn't. They haven't done that. UKI have now suggested that Mr W had done several quotes with the claim as fault and non-fault. UKI implied that he'd done that in order to choose the cheapest option. But I'm not persuaded by any of the evidence UKI provided in support of their implication. It doesn't link to the questions asked of Mr W.

Mr W disclosed all his previous claims. I still think that if it was important to UKI that they know if a claim which a consumer disclosed was still open or not, that should have been made clear to Mr W from the beginning. It wasn't, and so I still consider that UKI didn't act reasonably when they tried to charge Mr W an additional premium. This means that I don't change my provisional decision.

My final decision

For the reasons given above, my final decision is that I uphold the complaint. I require U K Insurance Limited trading as NIG to :

- Refund Mr W the extra amount they charged him in premium, plus interest at 8% a year simple from the date he paid that until the date UKI refund it to him, and
- Refund Mr W the amount he paid for NCD protection, plus interest at 8% a year simple from the date he paid that until the date UKI refund it to him, and
- Pay Mr W compensation of £150 for the distress and inconvenience he experienced.

UKI must pay the compensation within 28 days of the date on which we tell them he accepts my final decision. If they pay later than this, they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If UKI consider that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr W how much they've taken off. They should also give Mr W a tax deduction certificate if Mr W asks for one, so Mr W can reclaim the tax from HM Revenue & Customs if appropriate.

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



Rosslyn Scott
Ombudsman