

complaint

Mr A's complained that Tradewise Insurance Company Limited unfairly avoided his motor insurance policy.

background

Mr A claimed on his policy after being involved in an accident. He was unhappy with how long repairs were taking and that he hadn't been provided with a hire car. He complained to our service.

Tradewise appointed an investigator to visit Mr A to discuss what happened. Tradewise told Mr A it had avoided his policy (which means it cancelled it from the start as though it never existed) because he had provided the wrong address (which I'll refer to as M) when he bought the policy. It said he'd carried out a quote online through a comparison website and then phoned to buy the policy. Tradewise thought Mr A had given the wrong information deliberately. It said it wouldn't pay Mr A's claim and would seek to recover any money it paid out to any other driver who claimed against his policy. So, Mr A asked us to look into this.

Tradewise said when Mr A bought his policy he told the broker he lived at M. However, it said all the documentation relating to his car listed a different address, that I'll refer to as E. Also, Mr A was on the electoral role at E. Tradewise said Mr A also said he used the train to commute to work from M to an address in the same postcode as E. It said he'd provided a mobile phone bill and driving licence showing his address was M. But it didn't consider this as acceptable proof of where he lived. Tradewise said it had asked Mr A for proof that he commuted by train from M, but he hadn't provided this. Tradewise told Mr A it thought he'd been commuting to work when the accident happened, and this wasn't covered under his policy.

Tradewise said it would have charged Mr A more for the policy if he'd provided the correct details. And as it thought he'd deliberately provided misleading information it avoided the policy.

Mr A said E belongs to his mother and M to his cousin. He said he lives at both addresses and commutes to work from M. He thought Tradewise was trying to get out of paying the claim.

I issued a provisional decision on this complaint on 29 November 2019. In that decision I said:

When he bought his policy Mr A had a responsibility - under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) - to take reasonable care not to make a misrepresentation. And for Tradewise to take any action at all it needs to show Mr A didn't do this and that he made what's described as a qualifying misrepresentation.

CIDRA sets out a number of things that need to be considered when deciding whether a consumer failed to take reasonable care. One of these considerations is the questions the consumer was asked. I've seen a screenshot from the comparison website that shows Mr A was asked his address. As part of this question it says, "We assume that the car you're insuring is kept at this address". Mr A answered 'M'. I've also listened to the call where Mr A phoned to buy the policy. He gave his address as M when confirming his details and he said he commuted to work by train.

Mr A's explained that he lives at both addresses. He said he commutes to work from M and stays at E at the weekends. He said he needed to move his family away from E and so stays with his cousin. He's provided a copy of his driving licence and mobile phone bill registered to M. He said his bank account isn't registered there because he's not the home owner. I accept that people can live at two addresses, but I've thought about what's most likely here and, in this particular case, I'm more persuaded that Mr A should have provided address E when buying his policy.

Mr A is on the electoral roll at E which is around 60 miles away from M. His V5 document and the finance relating to his car are listed as E. I've also noted that he gave his address as E when he brought his complaint to us. Mr A works in the same postcode as E and hasn't provided any evidence to persuade me he commutes to work from M by train. In fact, when interviewed by Tradewise's investigator Mr A said he was driving to work. So, I think Tradewise's decision to say Mr A lives in E is reasonable.

In view of this, I think Mr A failed to take reasonable care not to make a misrepresentation. But to show Mr A's misrepresentation was a qualifying one, under CIDRA Tradewise needs to show it would either not have offered the policy at all, if Mr A hadn't made the misrepresentation or that it would have offered it on different terms. Tradewise has shown that it would still have sold Mr A a policy, but the premium would have been higher if he'd given his address as E. So, I'm satisfied Mr A made a qualifying misrepresentation.

While I agree with our investigator that Mr A also failed to take reasonable care when asked how he got to work, Tradewise has confirmed it would have still offered the policy, and at the same price. So, I'm not going to consider the answer Mr A gave about how he got work, as this isn't a qualifying misrepresentation in its own right.

I'm satisfied giving the wrong address was a qualifying misrepresentation though. And a qualifying misrepresentation can either be deliberate or reckless or careless. Tradewise has provided enough evidence to show it's most likely Mr A lives at E and should have given that address when buying his policy. And I find it unlikely that he would give the wrong address by mistake. So, I'm not going to interfere with Tradewise's decision to say he made a deliberate misrepresentation. As a remedy for a deliberate misrepresentation, CIDRA allows the insurer to avoid the policy and keep the premium. That's what Tradewise has done and I don't intend to interfere with that. It follows that Tradewise don't have to pay Mr A's claim and can look to recover anything it pays out to the other driver.

Neither Tradewise nor Mr A responded to my provisional decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As neither Tradewise nor Mr A responded, I see no reason to depart from my provisional findings. So, for the reasons set out in my provisional decision I don't uphold this complaint.

my final decision

For the reasons set out above and in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 20 January 2020.

Sarann Taylor
Ombudsman