

complaint

Mr S complains that U K Insurance Limited voided his motor insurance policy when he didn't provide information it had asked him for.

background

Mr S has insured his car with UKI for several years, though each year he takes out a new policy online rather than renewing the existing one.

His most recent policy was also taken out online. Shortly after doing so, Mr S rang UKI and asked it to use a different address to the one he'd given in the application as a correspondence address. UKI noted that Mr S had done something similar in a previous policy year.

UKI asked Mr S for proof that he lived at the address he'd declared on the policy. After some discussion, Mr S provided proof of residence in the form of a utility bill and his driving licence.

However, UKI also asked for proof that Mr S owned the property. It said he'd declared that he owned a property when he took out the policy – which entitled him to a lower premium. It also asked for proof of the number of cars at the property.

Mr S said he couldn't provide that information. He said he owned the property with his father jointly, but his father – who has mental health difficulties – wouldn't let their bank provide proof of their joint mortgage. And he said other members of his family weren't willing to give him proof of their vehicle ownership for him to pass on to the DVLA.

UKI voided Mr S's policy. It said he had made deliberate misrepresentations about owning the property and about the number of cars at the property. It said it wouldn't refund Mr S's premiums.

Our investigator looked into Mr S's complaint. She noted that the question Mr S was asked when he took the policy out asked whether he owned a property. UKI confirmed to her that it didn't require an insured to own the property they lived in – they just needed to own a property to benefit from the discount. She checked the Land Registry and didn't find that Mr S was recorded as owning the property he lived in (or the correspondence address) – but he did own other properties.

Our investigator said she didn't think it was fair for UKI to conclude that Mr S had made a deliberate or dishonest misrepresentation. She said he hadn't co-operated with its requests for information to verify what it had been told. But it hadn't shown that the information he'd given when he took out the policy was actually wrong. She said the terms entitled it to cancel the policy if he didn't provide evidence when requested. But in the absence of evidence of an actual misrepresentation, she didn't think it was fair for the policy to be voided. Instead, she said it should be recorded as having been cancelled, and UKI should make a proportionate refund of the premium Mr S had paid.

Mr S accepted that. But UKI said it had asked Mr S for evidence to support what he had said when asked. He hadn't provided it, so it was entitled to void the policy.

my findings

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

The power for an insurer to void a policy comes from the Consumer Insurance (Disclosure and Representations) Act. This says, in summary, that a consumer has a duty not to make a misrepresentation when taking out a contract of insurance. Where a misrepresentation is made, which affects whether the policy would have been agreed (or the terms on which it would have been agreed), the insurer has a remedy. Where the misrepresentation is deliberate (which UKI says it was) the remedy allows the insurer to void the policy and not return the premiums – unless it would be unfair to retain them.

The issue in this case is whether there was a misrepresentation at all.

UKI has relied on two points to void the policy – that Mr S didn't provide proof of property ownership when asked, and that he didn't provide proof of the number of cars at the property.

Mr S doesn't own the property he lives in, to which the car is registered and which is the basis of the insurance. But UKI has confirmed to our investigator that in asking the question whether he owns a property, it's not restricting acceptable answers to the risk address. Mr S does in fact – the investigator has confirmed with the Land Registry – own other properties. So the answer he gave to the question he was asked was accurate in the sense that he gave an answer that was acceptable to UKI. And the question he was asked wasn't specific about whether the property he owned was also the property he lived in.

He didn't provide proof of property ownership when asked. The Act says that a failure to comply with a request to confirm information is capable of being a misrepresentation. But, in this case, I don't think it is a misrepresentation – since it's now been established that what Mr S said was in fact, within UKI's criteria, an accurate and acceptable answer. Mr S ticked the box that said he owns a property – and he does. He didn't provide proof that he owned the risk address when asked (in fact, it seems, he doesn't). But he does own another property, and that's good enough to satisfy UKI's criteria.

Mr S didn't provide proof of the number of cars at the property either. But UKI hasn't shown that the answer he gave was inaccurate. Mr S didn't provide the proof UKI requested – and I've said a failure to provide proof is capable of amounting to a misrepresentation. But Mr S has given a plausible explanation as to why he wasn't able to provide proof of ownership of all the cars in the household. The other cars belong to other members of his family, and he isn't able to force them to give him copies of their registration documents to pass on to UKI. UKI suggests Mr S has made a deliberate or dishonest misrepresentation – and I don't think it's provided enough evidence to show that's a conclusion it could fairly have reached in the circumstances.

Taking that into account, then, I don't think UKI has shown that Mr S has made a deliberate or dishonest misrepresentation. And so I don't think it acted fairly in voiding his policy.

However, it is part of the terms and conditions that UKI is entitled to ask for confirmation of what Mr S said, and the terms say the policy could be cancelled if it's not provided. And Mr S didn't in fact provide the evidence UKI asked for. So while I don't think that failure reaches the standard required to show a deliberate misrepresentation, I do think it entitled UKI to cancel the policy relying on that term.

I therefore think the fair outcome of this complaint is for UKI to amend its record to show that the policy was cancelled rather than voided. It should change any entries it has made on external databases to that effect as well. And it should refund to Mr S the premium he paid, proportionate to the time on risk.

my final decision

For the reasons I've given, my final decision is that I uphold this complaint and direct U K Insurance Limited to:

- Record the termination of this policy, in its own systems and external databases, as a cancellation rather than avoidance and amend any records it has previously reported to the databases;
- Refund to Mr S that part of the premium for the period from the date of cancellation to the end of the policy term, adding simple annual interest of 8%* running from the date of cancellation to date of refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 April 2019.

Simon Pugh
ombudsman

** If UKI considers that it should deduct income tax from the interest element of my award it may do so, but should give Mr S the necessary paperwork, if he asks for it, so that he can reclaim the tax from HMRC if he's entitled to do so.*