

complaint

Mr V complains that Advantage Insurance Company Limited (underwriters for Hastings Direct) has voided his car insurance policy for non-disclosure and refused to pay his claim for the total loss of his vehicle.

background

Mr V brings this complaint through an independent loss adjuster who I shall call Mr A.

In September 2012 Mr V received a fixed penalty fine for using his mobile phone while he was driving (CU80). In May 2013 his father set up the policy for him using a price comparison website. He answered "no" to the question whether Mr V had had any motoring convictions over the last five years. This information was recorded on the statement of insurance which Advantage sent Mr V on 17 May 2013. In October 2013 Mr V was involved in an accident. The car was deemed to be a total loss. During a conference call between Mr V, Hastings and the DVLA the CU80 was disclosed. The adviser reassured Mr V that, although she would need to inform the underwriters, it shouldn't be a major issue. She said it might affect the cost of his premium. Hastings offered Mr V £3,500 in settlement of his claim but he didn't think that was enough so refused it. Soon afterwards the underwriters decided to void the policy and repudiate the claim because of the non-disclosure.

The adjudicator who investigated the claim thought Advantage was entitled to void the policy. But she did accept that the initial information Mr V had been given about the effect of the non-disclosure was misleading, particularly as it was followed by a settlement offer. She recommended Advantage should pay Mr V £100 for the distress and inconvenience that this caused.

Advantage accepted this recommendation. Mr A asked for the complaint to be reviewed. He said that as it was Mr V's father who had completed the proposal form it couldn't be said that Mr V had materially withheld the information about the CU80.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Advantage has produced underwriting evidence that confirms that if it had known about the CU80 it wouldn't have agreed to insure Mr V.

In his initial letter to us Mr A said that Mr V's father knew about the CU80 because, after Mr V received it, he came home and "naturally" discussed it with his parents. But this isn't what Mr V told the telephone adviser when the DVLA revealed its existence during the conference call. He said then that he didn't realise that he had any points on his licence for the CU80. He said he'd sent his licence in to get some earlier speeding points taken off and that, when it was returned to him, there was one thing on it with a code which he didn't understand. Mr A has confirmed to our adjudicator that Mr V did know about the offence. He says Mr V panicked when the DVLA told the adviser about it. So it is accepted on Mr V's behalf that he didn't give a truthful explanation as to why the CU80 hadn't been disclosed at the time it came to light.

I cannot agree that the fact that someone other than Mr V completed the proposal form means that he isn't responsible for the information it contained. Mr V still needed to make

sure that the information his father gave Hastings was correct. Either by going through everything with him before he completed the form or by making sure that the information his father had provided was accurate. He had an opportunity to do this when the statement of insurance arrived a few days later. This clearly explained why it was so important to give full disclosure and specifically asked Mr V to check the accuracy of the information it contained.

The relevant section is headed "*motoring convictions, fixed penalties or pending prosecutions within the last five years.*" So even if Mr V didn't understand the CU80 code he did know that less than a year ago he'd been stopped by the police for using his mobile phone in the car, had had to pay a fine and send his licence to the DVLA. I don't think there can have been any doubt in his mind that he had received a fixed penalty within the previous five years. Given that Mr V hadn't completed the proposal form himself, it was doubly important for him to check the insurance statement and inform Hastings of any errors. I consider his failure to do so goes beyond innocent or careless non-disclosure. So I have concluded that Advantage was entitled to void the policy.

I have listened to the recording of Mr V's conversation with the adviser, following the conference call with the DVLA. I agree with the adjudicator that the adviser did give Mr V the impression that the non-disclosure wouldn't make much difference. This was clearly misleading, as was the settlement offer. As Mr V hadn't accepted that offer, it remained open to Advantage to withdraw it. I agree that an award of £100 is appropriate to compensate Mr V for the upset he must have felt when he realised that the adviser hadn't properly explained the full implications of the non-disclosure.

my final decision

My decision is that I uphold the complaint to the extent of requiring Advantage Insurance Company Limited to pay Mr V £100 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr V to let me know whether he accepts or rejects my decision before 5 May 2015.

Melanie McDonald
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