

complaint

Mr C is complaining that Tradewise Insurance Company Limited (Tradewise) has avoided his commercial vehicle insurance policy.

background

In January 2018 Mr C took out a commercial vehicle insurance policy out with Tradewise. He arranged the policy through a broker. In February 2018 Tradewise wrote to Mr C to say that it was avoiding his insurance policy due to a misrepresentation of his claims history and it said it would be retaining the premium he paid.

Mr C complained as he thought the avoidance was unfair. He said he didn't dishonestly misrepresent the claims history and he also thought it was unfair that he wasn't given the opportunity to respond before the policy was avoided. He said he made a simple mistake and this has ruined his business as he can no longer afford to meet his financial commitments.

Tradewise maintained that the avoidance was fair. It said that Mr C was asked how many claims he'd had in the last three years and he only disclosed one. But it said there were two other claims made and a further claim that was subsequently withdrawn. It thought he deliberately withheld this information to get a cheaper premium.

Our adjudicator didn't uphold the complaint. He said that he listened to all the calls that Mr C had with the broker when taking out the policy. And he said that Mr C had initially said that he hadn't made any claims. The broker later found out about the claim that was disclosed and the adjudicator said that Mr C disputed that claim as he said he'd told the insurer not to settle the claim. And the adjudicator said Mr C would speak with his previous insurer.

The adjudicator thought that Mr C continued to provide incorrect information and he thought Mr C would have known the importance of doing so. So he thought that Mr C's misrepresentation was either deliberate or reckless. And he said Tradewise could avoid the insurance policy and retain the premium in these circumstances.

Mr C didn't agree with the investigator. He said he gave the broker his insurer's details and asked it to contact the insurer to get the correct details. He says the broker contacted him again to say that it was happy to continue with offering the policy. He maintains that he always answered the questions to the best of his knowledge and belief. He said he had no motive to be dishonest to not provide the correct claims history. He said he thought he only had to disclose claims that he made on the policy and he says he didn't make these claims.

As he didn't agree, the complaint's been passed to me to decide.

my findings

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

I've decided to not uphold this complaint and I'll now explain why.

Mr C thinks that it was unfair for Tradewise to avoid his insurance policy because of what he says was a simple mistake. But under the Insurance Act 2015 it was Mr C's responsibility to

tell Tradewise about everything it needed to know to decide whether to insure the risk and under what terms ('duty of fair presentation').

The Insurance Act sets out that misrepresentation can fall within four different categories – deliberate, reckless, careless and innocent.

An insurer can avoid an insurance policy and retain the premiums paid where it can show that the misrepresentation was deliberate or reckless, regardless of whether it would've insured the applicant or not had it known the true facts. It can only declare a policy void for careless misrepresentation if it can show it wouldn't have insured him had the misrepresentation not happened. But it must refund the premiums the policyholder paid. Tradewise says this is reckless misrepresentation. And I agree.

The Insurance Act considers a misrepresentation to be reckless or deliberate if the insured knew that he was in breach of the duty of fair presentation or didn't care whether or not he was in breach of that duty.

Mr C was aware that he needed to give an accurate reflection of his claims history. I've listened to all the calls that Mr C had with the broker and he was inconsistent with the information he gave. I can see that on one call, the broker told Mr C that it had become aware of a claim and Mr C acknowledged that he was aware of that claim. The call handler set out that he needed to contact his previous insurer to get a full understanding of his claim history. And Mr C acknowledged this

It appears that Mr C did speak with his previous insurer about his No Claims Bonus entitlement, but didn't discuss the claims history. And Mr C continued to provide incorrect information about his claims history after this point. In a further call the broker explained to Mr C that he's providing inconsistent answers and Mr C was aware of this.

Ultimately it was Mr C's responsibility to ensure that Tradewise had all the correct information. And, he was aware that he should have discussed his claims history with his previous insurer about what his claims history was. And I can also see that the broker asked him to speak with his previous insurer on at least two occasions in respect to his claims history. But he didn't do so.

I note Mr C said that he asked the broker to speak with the insurer and he says that the broker said it would do so. But I don't agree. From listening to the calls, I can see that he did ask the broker to do so, but it said that it was Mr C's insurer so he needed to contact the insurer himself.

Ultimately, I'm satisfied that Mr C was aware that he needed to clarify what his actual claims history was but didn't do so. Given this, I have to conclude that he didn't care whether the information he was giving was correct or not. So I think it was fair for Tradewise to consider the misrepresentation to be reckless. The Insurance Act allowed it to avoid the insurance policy and retain the premium in these circumstances. So I don't think Tradewise acted unfairly in this case.

my final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 24 February 2019.

Guy Mitchell
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