

complaint

Mrs H complained that Southern Rock Insurance Company Limited avoided (treated it as if it had never existed) her motor insurance policy and refused to pay her claim.

background

Mrs H's car was unfortunately stolen and she made a claim under her policy with Southern Rock. But Southern Rock rejected her claim and avoided her policy.

They said that she hadn't told them her car's true value and if she had, they wouldn't have insured her at all. They thought that she'd either deliberately or recklessly misrepresented her car's value, in order to obtain cheaper insurance, and they wouldn't refund the premiums she'd paid. Mrs H felt that there had been a genuine mistake and that Southern Rock had been very unfair. She wanted Southern Rock to honour her policy and pay her claim.

The adjudicator recommended that Mrs H's complaint should be partly upheld. She thought that Mrs H had made a qualifying misrepresentation and so Southern Rock's decision to avoid her policy and reject her claim was reasonable. But, because Southern Rock hadn't shown that Mrs H's misrepresentation had been deliberate or reckless, it could only be careless misrepresentation and so Southern Rock should refund Mrs H's premiums plus interest.

Southern Rock didn't reply to the adjudicator's view, but Mrs H didn't agree and so the case has been passed to me to decide.

my findings

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

It's clear that Southern Rock's actions have had major financial consequences for Mrs H. She lost her car but still had to continue making the repayments on her car finance agreement and would have to pay the finance company the large final outstanding balance. This has clearly caused her a great deal of stress and anxiety, and she says that it has had an adverse effect on her health. She wants Southern Rock to honour her claim.

The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

If a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is what CIDRA describes as a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show that they would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was deliberate or reckless, and the insurer can show that they would not have offered the policy at all, or that they would only have offered it on different terms, they are entitled to avoid the consumer's policy. This means they will not have to deal with any claims under it. They may also keep the premiums paid.

If the misrepresentation was careless, then to avoid the policy, the insurer must show that they would not have offered the policy at all if it wasn't for the misrepresentation. But they should also return the premiums paid. If they would still have offered the insurance if the consumer hadn't made the misrepresentation, but on different terms and would have charged a higher premium for it, the insurer will have to consider the claim and settle it proportionately if they accept it.

When an insurer claims that a consumer misrepresented information that's important to the insurer, we check whether the insurer asked the consumer a clear question about that information when they took out the policy.

Southern Rock claimed that Mrs H deliberately or recklessly misrepresented her car's value. They said as follows. When she took out the policy she'd told them her car was worth about £7,000 but in fact it was worth over £50,000.

Southern Rock didn't insure high value cars at all. So, if they'd known her car's true value at the start, they wouldn't have insured her at all. And they've shown us their underwriting criteria to confirm this. They said that if she had entered her car's correct value, the online comparison website she bought the policy through would have automatically excluded Southern Rock from quotes it supplied her.

Southern Rock said that the application she completed online asked the question: "*What is the estimated value of the vehicle?*" and that she answered "7000". I think that this is a clear question. So I have to consider whether Mrs H took reasonable care to answer that question.

Mrs H has given various explanations about what could have happened. Only about a few weeks after she made her claim, she gave a statement to Southern Rock's agent about the circumstances of the theft. In it she said:

"I understand that I insured the car for £7,000, this was an error as the car is worth £57,000. I must have accidentally selected the wrong figure from the drop-down list when I was filling in the online form."

Mrs H later denied having said this to the agent and claimed that he put words into her mouth and she only signed the statement at his instigation to have Southern Rock settle her claim faster. Nevertheless, she did sign it and declare that the facts stated in it were true.

Later, Mrs H told us that she couldn't remember the website asking the car value question, and that if they had asked it she wouldn't have been able to answer it, because she didn't know her car's value. She said "*All I entered was 7000 for mileage. As even at that time I would not have even known the value of the vehicle myself*". But this seems unlikely, as Mrs H had only bought her car the year before she applied for her policy, and the invoice shows that she paid over £58,000 for it then. I think it would have been reasonable to expect her to estimate its value a year later and find it out if she wasn't sure.

Mrs H also felt that Southern Rock could have changed the car value she'd inserted, because she said that after she took out her policy she phoned them about driving abroad, and they modified her mileage without her consent on the amended certificate. She felt that Southern Rock should have to prove that they hadn't changed what she'd said in her application.

But Southern Rock aren't obliged to do that, because the premise of insurance is that the consumer knows their own information about themselves and the insurer doesn't. So it's up to the consumer to ask questions about information that important to them, and for consumers to answer those correctly. But it's also up to the consumer to check the policy documents to check that the information is correct.

Southern Rock said that, even if there was a mistake with the car's value at the online application stage, they'd asked Mrs H to check her policy documents carefully afterwards, and they'd made it clear that if the information was incorrect it could affect her policy's validity. But she hadn't told them about the mistake.

I've looked at her proposal form and it says:

"IMPORTANT: This is the information you supplied and on which your Insurance is based. This statement of information must be retained and read together with your Policy Booklet, Certificate of Motor Insurance and Motor Policy Schedule. You should also ensure that the information you have provided in this statement is accurate. If it is incorrect in any way, please tell your intermediary immediately. Failure to supply accurate and complete answers may mean Your Policy is invalid and that it does not operate in the event of a claim."

The form also says, under "Declaration & Disclosure":

"You are required by the Consumer Insurance (Disclosure and Representations) Act to take reasonable care to answer all questions asked honestly, accurately and to the best of Your knowledge and that any other information given either verbally or in writing by You, or on Your behalf, at the time You applied for insurance is also complete. Failure to supply accurate and complete answers may mean Your Policy is invalid and that it does not operate in the event of a claim."

A similar warning is given in the policy itself. So I think that Southern Rock did give warnings about the effect of not checking the documents carefully. Mrs H said they didn't actually post the policy documents to her but had only uploaded them on her portal. But we think that is enough, particularly as I see that she could have asked for hard copies of them if she wanted.

In fact Mrs H said that she did check her policy documents, but because her car's mileage had been 7000, she thought that the 7000 figure in the policy certificate referred to that mileage, rather than to the car's value, because it didn't have a "£" sign.

But I think that the policy documentation is clear about the car's value. The proposal form says in paragraph 2 in the section "Your vehicle", "Value (inc accessories) 7000. "

And the policy schedule in the section headed “*CAR DETAILS*” says “*Estimated value 7000*”. I do see that in the same section of the policy schedule it also says “*Estimated annual mileage 7000*”, so that figure does appear in two places, but I don’t think that what is said about the car’s value is unclear. I think that the documents do clearly say that the car’s value was 7000.

Mrs H also felt that Southern Rock should have checked the car’s value and noticed that the figure there was too low for her car, which was a high end make and fairly new model. She said that Southern Rock should have done this when she applied for the policy, by checking the entered value against the car’s make and model and registration, as she understood some other insurers did. Or they should have checked and noticed it later when she phoned them to make changes to her policy. But instead they only noticed it when she reported the theft to Southern Rock and their staff member asked her why the value was so low. She felt they were looking for reasons to reject her theft claim and that if they had noticed the mistake earlier, the car’s insured value could have been corrected and she would have been willing to pay the difference in premiums to insure her car at the correct value. However that wouldn’t have happened, as Southern Rock have shown us that they wouldn’t have insured a car of that value at all.

Southern Rock say that if Mrs H had entered her car’s true value the online comparison system would have excluded Southern Rock as an insurer from quotes supplied to her. But in any event, this organisation can’t stipulate what systems or processes an insurer should use when allowing someone to buy a policy. That’s a matter for their commercial judgment and we don’t interfere with that. All we expect is that they ask clear questions, and, as I’ve said above, I think that Southern Rock did that. They asked for the information they needed to assess their risk in offering insurance. It’s the consumer’s responsibility to answer those questions correctly, and not for the insurer to check or question that.

Taking all of the above evidence together, I think that Southern Rock were not unfair to decide that Mrs H failed to take reasonable care not to make a misrepresentation about her car’s value when she took out the policy. And they’ve shown us evidence from their underwriting criteria that if Mrs H had not made this misrepresentation they would not have offered her insurance at all, so I’m satisfied that Mrs H’s misrepresentation was a qualifying misrepresentation.

I do see that Mrs H is likely to be disappointed with this decision, because she wants Southern Rock to pay her claim under her policy. I think it’s very unfortunate that her car was stolen from outside her home, and that a mistake has had severe financial consequences for her, and that it’s caused her great stress and anxiety. But, in all the circumstances of her case, I think that Southern Rock’s decision to reject her claim and avoid her policy was reasonable and in line with the policy.

However, under CIDRA, Southern Rock can’t retain the premiums Mrs H paid, unless they can show that her qualifying misrepresentation was deliberate or reckless. But Southern Rock haven’t shown us any evidence that she either intended to mislead Southern Rock about her car’s value or was reckless in what she disclosed about it. I think that the overall evidence suggests that she made a mistake when applying for the policy and didn’t then check the policy documents as we expect a reasonable consumer to do.

And under CIDRA, if a qualifying misrepresentation isn't deliberate or reckless misrepresentation, it is treated as being careless. And so I don't think that Southern Rock have been reasonable in refusing to refund her the policy premiums she paid up to the date they'd decided to avoid her policy, plus interest since then. And so I agree with the adjudicator that Southern Rock should refund her policy premiums plus interest as below.

my final decision

For the reasons above, it is my final decision that I partly uphold this complaint and I require Southern Rock Insurance Company Limited to do as follows:

- Refund to Mrs H the premiums that she paid under the policy, adding interest on that amount at 8% simple per annum from the date of voidance to the date they make the payment to her.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs H to accept or reject my decision before 23 July 2020.

Rosslyn Scott
ombudsman

If Southern Rock consider that they are required by HM Revenue & Customs to withhold income tax from interest, they should tell Mrs H how much they have taken off and give Mrs H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.