

complaint

Mr C complains that Tradewise Insurance Services Ltd voided his commercial vehicle policy (treated it as if it never existed). This was because Mr C failed to mention that his son, T, a named employee and driver on the policy, had been convicted of a criminal offence resulting in a fourteen month custodial sentence.

Background

In April 2013, T was convicted and imprisoned. This information wasn't disclosed to Tradewise when the policy was renewed in November 2013. Mr C says he told the broker about it during the renewal call.

Tradewise found out about the conviction after there was a claim on the policy in July 2014. Tradewise said, if it had known about the conviction, it wouldn't have agreed to offer cover, so it voided the policy. It didn't refund the premium because there was an ongoing claim.

my provisional decision

I issued a provisional decision in which I said I didn't think the complaint should be upheld. I gave both Mr C and Tradewise the opportunity to send in any further arguments or information they would like me to consider. Tradewise had nothing further to add. Mr C sent in a detailed letter of response. He said:

- As someone with extensive experience of the insurance industry he understood the importance of disclosure and had definitely told the broker about T's conviction when the policy was renewed over the phone;
- He didn't have a daughter as a named driver on the policy – that was Tradewise's mistake;
- Tradewise didn't find out about the conviction as the result of the claim being made;
- It was wrong to say T had a fourteen month custodial sentence when in fact he only served four months in prison;
- He didn't initiate the claim. Tradewise contacted him about it in the first place;
- Tradewise weren't entitled to keep the premium because of the open claim. Tradewise had asked him to give evidence at court in support of its case. Mr C said he was only willing to consider doing this if Tradewise removed the voidance on the policy and repaid his premium. In the end Tradewise didn't follow this up;
- He couldn't be described as reckless as he 'd informed the broker about the conviction.

Overall Mr C criticised the way in which Tradewise had behaved. He said that its conduct went against the principle of "utmost good faith" which underpins dealings throughout the insurance industry.

I appreciate that Mr C feels very strongly both about the original decision made by Tradewise and my finding that Tradewise was entitled to take the action it did. I have given careful consideration to the various points that Mr C has raised but, for the reasons set out below, I'm not persuaded that the complaint should be upheld.

my findings

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

I accept Tradewise's evidence that, if it had known about T's conviction, it wouldn't have provided a policy including T as a named driver.

I also accept that Tradewise wasn't told about T's conviction when the policy was renewed in November 2013. This is consistent with the information contained in the statement of fact. Tradewise isn't responsible for the broker's actions. If the reason that Tradewise didn't know about the conviction was because the broker didn't pass on the information, Mr C must pursue this matter against the broker's firm.

The statement of fact Tradewise sent Mr C clearly set out the importance of correcting any inaccurate information, along with the possible consequences of not doing so. T had been given a custodial sentence of fourteen months. The fact that he was eligible to be released on parole after four months doesn't affect the length of the sentence the court considered appropriate to the offence he'd committed. This was a significant and recent event. I would have expected Mr C to notice that it hadn't been included in the statement of fact and immediately notify Tradewise, as the statement required him to.

Despite the detailed letter Mr C sent in response to my provisional decision, he still hasn't explained why he didn't do this. I have therefore concluded that his failure to do so was reckless rather than merely an oversight on his part.

Mr C objects to Tradewise's request that he give evidence at court about the accident. But I consider that it was entitled both to retain the premium and to ask for Mr C's co-operation in dealing with the claim under the terms of the policy. This was not a situation where negotiation of the kind Mr C attempted was appropriate. The advantage to Mr C in giving evidence would have been the potential for a court to find that the accident wasn't his fault. This would then have been recorded on the insurance data bases and limited any further increase in his premium. Since Mr C was unwilling to give evidence, except on his own terms, it's not surprising that, having written to him several times, Tradewise didn't pursue the matter further. A reluctant witness is unlikely to help win a court case. But I don't consider that Tradewise's request was unreasonable.

Tradewise may have mistakenly included Mr C's daughter as named driver, but I don't see how that would affect its entitlement to void the policy for the failure to disclose relevant information about another driver who was named on the policy. Nor do I think that how Tradewise found out about the conviction or who initiated the claim is relevant.

The simple fact is that T was given a fourteen month custodial sentence which wasn't disclosed to Tradewise as it should have been. Mr C had the opportunity to tell Tradewise about the conviction but he didn't do so.

It follows that I remain of the view that Tradewise was entitled to void the policy. I can't find any evidence that it has acted in bad faith, although I accept that the consequences for Mr C have been significant so I understand why he feels so strongly about the voidance.

my final decision

I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 9 July 2015.

Melanie McDonald
ombudsman