

complaint

Mr K has complained about the poor service Swinton Group Ltd provided when he made a claim under his car insurance policy.

background

Mr K bought a car insurance policy through a broker, Swinton in November 2016. In January 2017 he changed his car. He called Swinton but initially gave the wrong registration details. So Swinton couldn't update his policy. However, Mr K says he called back later and provided the correct registration details. On the same day Swinton sent Mr K a renewal letter and policy schedule. This confirmed cover was in place for a year with the correct car registration details.

In February 2017 Mr K felt unwell and pulled over in his car. He caused damage to his car as he did. The police attended and discovered that Mr K's car wasn't insured.

Mr K contacted Swinton and it said it hadn't updated his policy in January as it was waiting for him to call it back. So it said Mr K hadn't insured his new car and couldn't claim for repairs. Mr K told Swinton that he was now facing prosecution for driving while uninsured.

Mr K bought a new car insurance policy with Swinton. But in July 2017 Swinton noticed it hadn't added the pending prosecution and incident, even though Mr K had reported both to it. This led to Mr K's policy being cancelled for misrepresentation.

Mr K said he went to a branch of Swinton's and was told that because of the cancelled policy, it couldn't arrange alternative cover for him in his name. Mr K said Swinton told him he'd have to transfer ownership of his car to his partner's name and have insurance in her name in order to remain insured. So Mr K did this.

However, Mr K's car was on lease and so it belongs to the lease company. So they told Mr K he'd need to change the ownership back to them. Mr K said the lease company told him he didn't need to change the legal owner of the car in order for his partner to be the registered keeper. Mr K feels Swinton gave him incorrect information. Mr K bought a new car insurance policy where his partner was the main driver and he changed the ownership back. This was much higher than the premium Mr K had previously paid for his car insurance.

Swinton said it wasn't responsible for Mr K being uninsured when he had an accident in February 2017. But it said it failed to add the incident and the pending prosecution when it arranged a new insurance policy for him in February 2017. And it was their error in trying to add the claim as a fault claim instead of a notification only claim that led to the insurer cancelling his policy in July 2017.

It said it told Mr K he didn't need to pay a balance on cancellation of the first car insurance policy – but then it charged him £44.49 on cancellation. And it accepted that he'd been given incorrect information about having to change the ownership of his car – as Swinton had told Mr K it couldn't arrange a policy in his name due to the previous cancelled policy by an insurer.

Swinton agreed to pay Mr K £200 compensation for the trouble and upset caused by its errors in February and July 2017. It also agreed to refund the difference between the premium he'd have paid under the cancelled policy and the new policy in his partner's name.

There was a difference of £0.50 between breakdown cover added to his partner's policy and the balance Mr K paid under the first cancelled policy. So Swinton provided a refund which included the compensation, difference in premium and difference of £0.50.

In January 2018 Mr K asked us to look at his complaints. Our adjudicator thought Swinton had led Mr K to believe he was insured to drive his new car from January 2017. So she thought Swinton was responsible for the costs and worry and upset Mr K had been through as a result of the pending prosecution. Fortunately Mr K wasn't convicted. But the adjudicator recommended that Swinton should do the following to put things right:

- Reimburse Mr K for the costs of the prosecution matter being brought to court including his legal expenses.
- Reimburse Mr K for the costs he paid to repair his car following the incident in February 2017.
- Pay a further £300 compensation for the worry and upset caused – in addition to the £200 already paid.

Swinton didn't agree. It believes it was clear that Mr K didn't have insurance in place in January 2017. As Mr K wasn't convicted, he hasn't suffered any increase in premium as a result of the conviction. And it isn't responsible for any increase in premium as a result of the incident. So Swinton would like an ombudsman 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. Having done so, I intend to uphold it.

Swinton has provided call recordings from 20 January 2017. Initially Mr K provided a registration number that was one digit wrong – so Swinton couldn't find Mr K's car to change the car under his policy as it was showing a different make of car to his.

However, on the same day Swinton sent Mr K a policy schedule of insurance along with a renewal letter. This shows he was insured for a year under the correct registration details for Mr K's car. So although Swinton says it was waiting for Mr K to call back, it seems that Mr K did provide the correct registration details to Swinton. And because Swinton sent a policy schedule to him on the same day confirming cover for a year starting that day, I can see why Mr K believed he was insured.

In February 2017 Mr K contacted Swinton. It said it had no policy in place for him for his new car. So he bought a new car insurance policy. But Swinton failed to add the incident Mr K told it about and the pending prosecution. Swinton accepts that this error led to Mr K's second policy being cancelled by the insurer in July 2017 as it said Mr K hadn't disclosed key information.

Swinton told Mr K the insurer has confirmed it hasn't recorded the cancellation on any internal or external databases. This means Mr K doesn't need to tell future insurers that he's had a previous policy cancelled by an insurer. Having to declare this can have a negative impact on the premium a customer pays for insurance.

Swinton has paid Mr K £355.64 to reflect the difference in premium for the replacement car insurance policy in his partner's name and includes the balance he was incorrectly asked to pay for the first cancelled insurance policy. In addition to this, Swinton has paid Mr K £200 compensation.

I don't think this is enough. I don't think Mr K would have continued to drive if he thought he wasn't insured. I think Swinton's schedule of insurance – sent with the correct registration and on the day Mr K called to say he'd changed his car – led him to believe he was insured.

This means I think Swinton is responsible for the consequences of what happened after Mr K damaged his car in February 2017. He's had to pay for the costs of the repairs to his car. He obtained legal advice to assist him in defending the prosecution for driving while uninsured. Fortunately he wasn't convicted. I think it should reimburse Mr K for the costs he incurred as a result of him not being insured – subject to reasonable proof. And I think Swinton should pay interest on the losses Mr K has had from the date Mr K paid to the date Swinton reimburses him.

While its good news that Mr K wasn't convicted, I've no doubt that having the matter hanging over him for several months caused Mr K considerable worry and upset. For this, I think Swinton should increase the compensation it pays him by £300.

my final decision

For the reasons I've given above, my final decision is that I uphold this complaint. I require Swinton Group Ltd to do the following – subject to reasonable proof of payment from Mr K:

- Reimburse Mr K for his out of pocket expenses as a result of the court case.
- Reimburse Mr K for the repair costs for his car as a result of the incident in February 2017.
- Pay interest on these sums from the date Mr K paid them to the date Swinton reimburse him at a rate of 8% simple interest a year.
- Pay Mr K a further £300 compensation in addition to the £200 it's already paid him for the trouble and upset caused.

Swinton Group Ltd must pay the compensation within 28 days of the date on which we tell it Mr K accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

If Swinton Group Ltd considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 7 September 2018.

Geraldine Newbold
ombudsman