

complaint

Mr K has complained that Swinton Group Ltd incorrectly advised him that after his car was scrapped, his policy could continue so he would still benefit from the 'driving other cars' extension under the policy, which allows the insured person to drive vehicles not owned or hired by him. He was subsequently stopped by the police while driving another car and found guilty of driving without insurance, although he was given the benefit of 'special reasons' and received no penalty.

background

Mr K held a policy, arranged by Swinton, for a number of years. In 2008 he scrapped his car and the registration was removed from the DVLA database. Mr K has said that he contacted Swinton in branch when he scrapped the car, and was told in person that he could continue the policy so as to continue to benefit from the 'driving other cars' extension. Swinton holds no record of this conversation.

The adjudicator recommended that the complaint should not be upheld. He thought it unlikely – on the balance of probabilities – that Swinton would have advised Mr K that he could continue a policy for a vehicle which no longer existed, over a number of years.

I disagreed, so issued a provisional decision upholding the complaint. I thought more likely than not that Mr K did go to a Swinton's branch and was incorrectly advised. I was persuaded by Mr K's explanation that this is what happened, particularly as he recalled details such as the Swinton adviser's name. Unfortunately, that person has now left the company so cannot be contacted. Further, I did not consider it likely that Mr K would have continued to pay a premium for a policy unless he believed it was still valid. As far as he was concerned, a Swinton's adviser had told him it was. On this basis, he kept the policy in place so he could drive a friend's car with what he thought was his own insurance.

I considered that on the basis of Swinton's incorrect advice, Mr K continued to pay premiums for a policy that was essentially worthless.

I was minded to find that if Mr K paid these premiums to Swinton to pass on to the underwriter, it should reimburse him these sums, adding 8% simple interest from the date each sum was paid to the date of settlement. It should also pay any reasonable expenses incurred in being stopped by the police and attending court, subject to satisfactory proof of these. Again, interest at 8% simple should be added from the date these sums were paid to the date of settlement.

It was also clear to me that Mr K suffered significant distress and inconvenience as a result of Swinton's incorrect advice – he had a worthless policy and ended up being stopped by the police and taken to court. Further, his future insurance costs are likely to be higher – although he was given the benefit of 'special reasons' by the court, he was still technically found guilty of driving without insurance. I therefore considered a total compensatory sum of £1,000 to be appropriate in the circumstances, to take future costs into account.

In my provisional decision, I said I was minded to require Swinton to:

- (a) reimburse any premiums Mr K paid to it, adding 8% simple interest from the date each was paid to the date of settlement;

(b) reimburse any reasonable expenses Mr K incurred as a result of being stopped by the police and attending court (subject to satisfactory proof of these), adding 8% simple interest from the date each of these sums was paid to the date of settlement; and

(c) pay Mr K £1,000 compensation.

I gave the parties one calendar month to respond to my provisional decision and Mr K responded to say that he agreed with the decision.

Swinton responded saying that it disagreed, for the following reasons:

- it feels the decision wrongly favoured Mr K;
- it does not agree the conversation in its branch took place;
- my provisional decision required a refund of premiums, but I also appeared to indicate that had a motor incident occurred, I would have expected this to be covered, so the premiums are due;
- no payment for distress and inconvenience should be due and that the amount suggested is not reasonable.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I am not persuaded to depart from my provisional decision.

This service is impartial and I have considered all of the evidence and arguments put to me in order to reach a conclusion I believe to be fair, based on what I believe was most likely to have happened. I maintain, for the reasons I gave in my provisional decision, that the conversation in the Swinton branch regarding whether Mr K still had 'driving other cars' cover did most likely take place. In particular, Mr K continued to pay his premiums, which I do not think he would have been likely to do if he did not believe, having been incorrectly advised, that he had cover in place.

As regards the refund of premiums, I still consider this to be fair. Mr K's policy was essentially worthless – this is why he was stopped by the police and subsequently convicted of driving without insurance. I do not believe it fair for him to pay for a worthless policy. Had he had the benefit of the policy, for example if he had been involved in an accident and a claim had been paid under the policy, my decision may well be different, but that is not what happened.

I consider a £1,000 compensatory award to be appropriate. This is not solely for the distress and inconvenience caused by being stopped by the police and convicted – albeit with the benefit of 'special reasons' – although this was undoubtedly an unpleasant experience. It also takes into account the fact that Mr K's insurance premiums will almost certainly be higher in future because of his conviction.

my final decision

For the reasons given above, I uphold this complaint and require Swinton Group Ltd to:

- (a) reimburse any premiums Mr K paid to it, adding 8% simple interest from the date each was paid to the date of settlement;
- (b) reimburse any reasonable expenses Mr K incurred as a result of being stopped by the police and attending court (subject to satisfactory proof of these), adding 8% simple interest from the date each of these sums was paid to the date of settlement; and
- (c) pay Mr K £1,000 compensation.

I make no further award.

Elsbeth Wood
ombudsman