

complaint

Mr T complains Tradewise Insurance Company Limited unfairly retained the premium he paid after it avoided his commercial motor insurance policy.

background

In 2018 Mr T took out a Tradewise commercial motor insurance policy through a broker. He paid a deposit, of about £750, towards the full policy premium. Shortly after Tradewise avoided the policy (treating it as though it had never existed). It said Mr T had failed to disclose some claims. It said if he had given the correct information it wouldn't have offered him cover. It didn't return his deposit.

Mr T complained to Tradewise. He wanted his deposit back. Tradewise responded that the policy had been fairly avoided. It didn't return the deposit. Mr T came to this service.

Our Investigator said Tradewise had unfairly avoided the policy. She felt Mr T had made a fair presentation of the risk in the initial sales call. So she said Tradewise should refund the deposit and remove any record of the policy being avoided. Tradewise didn't accept her assessment. So the complaint has come to me for a final decision.

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, Tradewise will need to repay Mr T any premium he paid, including his deposit.

I've already explained my thoughts on this complaint to Mr T and Tradewise. I said Tradewise's decision to avoid the policy was fair. He failed to make a fair presentation – he ought to have known to disclose all three of the claims. I said I'm satisfied, if he had disclosed them, Tradewise wouldn't have offered cover. I said this meant there had been a qualifying breach - so it was fair for Tradewise, in line with the Insurance Act 2015 (IA 15), to avoid his policy. As both Mr T and Tradewise seemed to accept that I haven't considered it in detail here.

But Tradewise didn't accept my view that as it hadn't shown the non-disclosure to be deliberate or reckless it couldn't fairly retain Mr T's deposit.

IA 15 allows an insurer to retain any premiums paid if the qualifying breach was deliberate or reckless. If it wasn't then the premiums must be returned. A qualifying breach is deliberate or reckless if the insured –

- a. knew that it was in breach of the duty of fair presentation, or
- b. did not care whether or not it was in breach of that duty.

It's for the insurer to show that a breach is deliberate or reckless. Tradewise hasn't done that.

Tradewise hasn't shown Mr T knew he should disclose the other claims. I've listened to phone calls between him and Tradewise. I've seen emails from him. They persuade me the non-disclosure happened due to his lack of understanding about what he was required to declare as a claim.

Tradewise also hasn't shown Mr T didn't care whether or not there was a breach. It says Mr T should have done more to find out about what claims he needed to declare. I agree he should have. But Tradewise hasn't shown his failure to do so was reckless. Instead it seems he didn't know there had been pay outs on the other two claims – so he didn't consider them to be 'claims' – it wasn't that he didn't care whether or not they were 'claims'.

So Tradewise will need to return any premium, including the deposit. As it incorrectly retained what he paid it caused him to be unfairly without the money. So it will need to pay him simple interest at 8% from the date of the avoidance to the date of settlement. Tradewise will also need to amend relevant records to show the avoidance as neither deliberate or reckless.

my final decision

For the reasons given above, Tradewise Insurance Company Limited will need to refund any premium Mr T paid. It will need to simple interest at 8% from the date of the avoidance to the date of settlement*. Tradewise will also need to amend relevant records to show the avoidance as neither deliberate or reckless.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 23 January 2020.

Daniel Martin
Ombudsman

* HM Revenue & Customs requires Tradewise Insurance Company Limited to take off tax from this interest. Tradewise Insurance Company Limited must give Mr T a certificate showing how much tax it's taken off if he asks for one.