

complaint

Mr F says Zenith Insurance Plc wrongly avoided his motor insurance policy (treated it as though it had never existed) and wouldn't reconsider its decision.

background

Mr F called his broker on 25 September 2017 to add a van to his policy from the next day. Mr F had agreed to buy the van from "Mr A". Mr F told the broker when asked that he (Mr F) would be the van's registered keeper. The policy documents he was sent shortly afterwards stated that he was the registered keeper.

In November 2017 another insurer told Zenith that the van had been involved in an accident with another vehicle. Mr F told Zenith that he was away at the time. He said Mr A had taken the van back, as Mr F still hadn't paid for it, and was driving when the accident took place. The police later charged Mr A for driving without insurance (but not with theft).

Zenith said Mr F couldn't show that he was the vehicle's registered keeper when he bought the policy - or even at the time of the accident two months later. It said he'd made a careless misrepresentation at the start by saying he'd be the van's registered keeper. It said it wouldn't have offered him cover had it known the facts, so it had the right to avoid the policy.

Mr F had trouble finding affordable insurance, so he asked Zenith to reconsider its decision. He provided part of a V5 registration document that showed his name as the van's registered keeper. But it didn't show when the transfer to him took place. Zenith asked Mr F to provide proof of that by contacting the DVLA, but he didn't do so.

Alternatively, Zenith said it would reconsider its decision if Mr F could show he owned the car. He didn't have an original receipt, but he sent Zenith a note he said was from Mr A (written two years after he acquired the van). The note said Mr F had done so for £1,500 in September 2017. But Zenith didn't think it was adequate evidence of ownership.

One of our investigators considered Mr F's complaint. She noted that Mr F had told her he hadn't paid for the van even at the time of the accident, which is why Mr A had taken it back. She also said Mr F hadn't shown the date on which he became the van's registered keeper. So she thought Zenith had acted reasonably in avoiding the policy.

As there was no agreement, the complaint was passed to me for review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Under the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA") a consumer must take reasonable care not to misrepresent the facts.

If an insurer can show that it was given incorrect details, and that it wouldn't have offered cover had it known the true facts, it may be able to avoid the policy and not pay any claim made on it. But it can only do so if it can show first of all that it asked the consumer a clear question. It then has to show that the consumer gave it the wrong answer to the question and didn't take reasonable care in replying. If the insurer can show the consumer gave it the wrong information deliberately or recklessly - not caring whether it was correct or whether it was important to the insurer - then it may avoid the policy *and* retain the premium.

Zenith's underwriting criteria show that it would have been acceptable to Zenith had Mr F been the van's registered keeper even if he didn't own it. But Zenith didn't think that was the case. In January 2018 Zenith asked Mr F why he'd taken out insurance when it seemed he wasn't the van's registered keeper or owner. Mr F replied by letter to say he'd acquired the van after paying half its purchase price. He said that was done "*....on the understanding that as soon as paid for in full the log book would be registered in my name.*" So by Mr F's own account, until that point he would not have been the van's registered keeper - or its owner.

Zenith requested the call recording from 25 September 2017 from the broker to show the question Mr F was asked about who was the registered keeper. The broker provided a transcript that showed that Mr F was asked "*Will you be the registered keeper?*" and that he replied "*Er, yes.*" So I think the question put to Mr F was clear, and he hasn't suggested otherwise. I think it was fair for Zenith to say his reply to the clear question wasn't correct.

In my opinion, Mr F didn't take reasonable care in answering the question, and I think his reply to Zenith's query in January 2018 is evidence of that. As he hadn't paid for the van when he bought the policy, despite having the use of it, Mr F knew he didn't own it. And he told Zenith he wasn't going to get the log book (and become the registered keeper) until he'd paid for the van. Despite that, he told the broker he was the registered keeper in September 2017.

Mr F's name was then shown as the registered keeper in the policy documents. At that point, he could have explained the situation to the broker or to Zenith, but he didn't. And since then Mr F has said he still hadn't paid for the van when the accident happened (two months later) which is why Mr A had taken it back. So based on his own account, Mr F couldn't have been the van's registered keeper until after November 2017.

In my view, it was reasonable for Zenith to query the partial V5 document Mr F later supplied – and to ask him for proof of the transfer date. Zenith told Mr F it couldn't access the details from the DVLA directly, due to data protection restrictions. I think it was his duty to co-operate with Zenith and to take steps to prove when he became the van's registered keeper. The partial V5 says that Mr F acquired the van on 30 September 2017 (although that date conflicts with the one shown on the purchase note). And Mr F still didn't provide any proof about the date of transfer. Without it, I think it's fair to say that the evidence points to him not being the van's registered keeper until some point after the accident.

I think it was reasonable for Zenith to avoid the policy. I think it has shown that it wouldn't have offered cover had it known Mr F wasn't the van's registered keeper or owner. Mr F didn't provide the evidence Zenith quite reasonably required of him to prove otherwise.

As Zenith thought Mr F had only been *careless* in providing the wrong information, he was due a refund of the premium. It advised him to contact the broker about that, which I think was also reasonable. As I don't think Zenith acted unreasonably in any respect, I can't uphold Mr F's complaint.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 17 July 2020.

Susan Ewins
ombudsman