

complaint

Miss K complains that Be Wiser Insurance Services Ltd did not ask her a clear question about criminal convictions when she purchased a motor insurance policy. Consequently, when she made a claim, the insurer treated her policy as if it did not exist (voided it) and declined her claim. She wants the matter resolved and compensation.

background

After Miss K was involved in a road traffic accident she submitted a claim under her motor insurance policy. It then came to light that Miss K had not disclosed a conditional discharge when she took out the policy. The insurer said that it would not have offered to insure Miss K if the conditional discharge had been disclosed and it therefore voided the policy. Be Wiser said that it had asked a clear question about criminal convictions and as Miss K had not answered the question correctly, it had not made an error. Miss K said that she now had trouble obtaining insurance.

The adjudicator recommended that the complaint should be upheld. He thought that Be Wiser had not asked Miss K a clear question in relation to her criminal convictions. In addition, the statement of fact which was sent to Miss K once the policy was purchased made no reference to criminal convictions and he therefore thought that she was not given an opportunity to correct any information previously provided in this regard. He thought that Be Wiser should ask the insurer to remove record of the voidance from all databases and, if this was not possible, it should provide her with a letter saying that the policy was voided in error. In that case, it should also compensate Miss K for any increase in premiums caused by the voidance and also pay her £200 for her trouble and upset.

Be Wiser responded that Miss K had been given ample opportunity to disclose her criminal history and she provided several excuses as to why it was not provided. It therefore thought that the nondisclosure was either deliberate or negligent.

my findings

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

As the adjudicator has explained, where a complaint arises from non-disclosure of information important to an insurer, we look to see that it asked a clear question when the policy was taken out, that the information given would affect whether a policy was offered, and whether the informant has acted carelessly or deliberately in making the non-disclosure.

The insurer says that, had it known of Miss K's criminal conviction, it would not have offered her cover. I note, however, that it considers that this non-disclosure was careless rather than deliberate. I note that Miss K had disclosed a previous motoring conviction but not all of her claims. I also note that when she made her current claim it was Miss K who then told the insurer that she had several previous convictions but that she did not have ready access to records of them. It was only after consulting her solicitor and obtaining further records that she was able to show that all but one of these convictions was "spent". This last conviction had two months remaining before it was "spent" when Miss K took out her policy. I can understand that Miss K may have been confused about which of her convictions was spent and I find that, on balance, I am satisfied that Miss K did not act deliberately in not disclosing this criminal conviction.

Be Wiser is adamant that it asked Miss K a clear question in relation to her criminal convictions and that she provided an incorrect answer. It says that she initially entered “no criminal convictions” when she obtained the quotation online and then confirmed this information was correct verbally on numerous occasions. It says that it should not be held responsible for Miss K’s failure to take reasonable care to answer questions asked.

However, I have not seen evidence that Miss K was asked a clear question about criminal convictions in her online application. I find, from the call records, that Miss K was asked to confirm information that she had entered online. In these calls, Be Wiser listed information about Miss K but she was not asked a clear question about criminal convictions at the point when she actually purchased her policy. The quotation which was provided at the time the policy was purchased formed the basis of the cover which was obtained. I find that it was for Be Wiser to ensure that it asked a clear question at that point about information that was important to its offer of cover, but that it did not do so.

Be Wiser says that when the policy was purchased Miss K was provided with her documentation, the certificate of insurance and the proposal form, which stated no criminal convictions had been disclosed and that it was for her to ensure that these were correct. However, I find that this was not the case. I find that the statement of facts listed motoring convictions, but there was no mention of criminal convictions in the documentation provided to Miss K. I find therefore that Miss K was not given an opportunity to correct any information previously provided about her criminal convictions.

In conclusion, I find that Be Wiser did not ask Miss K a clear question about her criminal convictions when she actually purchased her policy. It follows that I find that Be Wiser should be held accountable for the consequences, that it should restore Miss K’s position and compensate her for the trouble caused.

my final decision

For the reasons above, it is my final decision that I uphold this complaint and I require Be Wiser Insurance Services Ltd to do the following:

1. Make a further request for the insurer to remove the record of the voidance of Miss K’s policy from all internal and external databases;
2. If the insurer does not agree to undertake the above, Be Wiser should provide Miss K with a letter detailing that the policy was voided in error;
3. Should the insurer not be prepared to remove the record of the voidance, Be Wiser should reimburse Miss K with a sum equal to the increase in premium she has paid/will pay, solely as a result of the voided policy, for a period of five years from the date Miss K can demonstrate that she has incurred any increase in premium, solely as a result of the voidance.
4. Pay Miss K £200 compensation for the trouble its actions have caused.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss K to accept or reject my decision before 11 May 2015.

Phillip Berechree
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