

complaint

Mr and Mrs T complain that UK Insurance Limited ("UKI") cancelled their motor insurance policy when they made a claim.

background

Mr and Mrs T took out a commercial vehicle insurance policy with UKI. After they renewed the policy, the vehicle was stolen. It was a van which had been modified into a campervan. UKI avoided the policy and declined Mr and Mrs T's claim. It said Mrs T hadn't said the vehicle had been modified when she phoned UKI and took out the policy. And it said if she'd told UKI this, it wouldn't have sold the policy. It also cancelled the policy. But it refunded the premiums Mr and Mrs T had paid. It also cancelled a policy held by Mr and Mrs T which covered a different car.

Mr and Mrs T complained to UKI. They said she'd misinterpreted question UKI asked about modifications to the vehicle. And they'd also sent proof of the no claims bonus on the vehicle to UKI, which would have indicated it was a campervan. UKI rejected their complaint. It said she'd been asked a clear question and not disclosed the modifications. And it didn't cover vans which had been modified into campervans under its commercial vehicle insurance policy.

Mr and Mrs T brought their complaint to this service. Our investigator thought UKI hadn't done anything wrong. He thought Mrs T should have disclosed the modifications when she took out the policy. And if she had, UKI would not have sold them the policy.

Mr and Mrs T didn't accept this outcome and asked for an ombudsman's decision. They said Mrs T had interpreted modifications to mean things such as alloy wheels. And they said UKI could have known it was a campervan when they sent the no claims bonus confirmation.

Since they asked for an ombudsman's decision, Mr and Mrs T have told us the vehicle has been recovered. But there was quite a significant amount of damage which had been caused to the vehicle. They're arranging for repairs to be done.

my provisional decision

In my provisional decision, I said:

As Mr and Mrs T are consumers I need to take into account The Consumer Insurance (Disclosure and Representation) Act 2012 (CIDRA), even though the policy they took out was a commercial vehicle policy. This puts an obligation on consumers to take reasonable care not to misrepresent when they enter into a consumer insurance contract. This is defined as a contract is mainly for purposes unrelated to their business. The act also says if the consumer fails to meet this obligation the insurer has a remedy against the consumer if it can show that without the misrepresentation it would not have entered into the contract at all, or would have done so only on different terms. This is what the Act describes as a 'Qualifying Misrepresentation'.

Mr and Mrs T entered into (took out) two consumer insurance contracts (policies) with UKI. The original policy and then another one when they renewed it. But UKI appear to think that by voiding the first policy, on the basis Mr and Mrs T made a qualifying misrepresentation both policies cease to exist. But this isn't the correct approach, as UKI needs to show

Mr and Mrs T made qualifying misrepresentations on both policies, ie when they took out the policy originally and at renewal.

I'm satisfied Mr and Mrs T did make a qualifying misrepresentation when they policy took out the policy originally. I've listened to the call Mrs T made to UKI to take out the policy. At no point in the call did she refer to the vehicle as a campervan. She said she wanted to insure a van. When she was asked whether there had been any changes to the vehicle from the "manufacturer's standard specification," she said no. But the van had been modified into a campervan, albeit before Mr and Mrs T bought it.

I think the question asked was clear enough to expect Mrs T to disclose the modifications which had been made. I've also reviewed the Motor Proposal Confirmation document sent to Mr and Mrs T after they'd agreed to go ahead with the policy and policy documents which they'd have been sent by UKI. The covering letter with these referred to "commercial vehicle" insurance, as did the policy document. So I think it should have been clear to Mr and Mrs T that UKI didn't know the vehicle was a campervan. And I think once Mr and Mrs T got these documents they should have contacted UKI to let it know. UKI has accepted, and it's not disputed, that Mr and Mrs T were careless when they made this misrepresentation. There's no suggestion they made it deliberately or recklessly.

When Mr and Mrs T renewed the policy, they were sent a new Motor Proposal Confirmation, which said there were no modifications to the vehicle. And documents which referred to the insurance being for a commercial vehicle. The documents they were sent asked them to call if any of the information was incorrect. I've seen no evidence to suggest they contacted UKI to tell them the van had been modified into a campervan. As I've said, I think it was obvious the vehicle had been modified from its original specification. So I'm satisfied Mr and Mrs T made another qualifying misrepresentation when they renewed the policy. And again, I think this was careless, as opposed to reckless or deliberate.

I've spoken to Mr T and asked why they didn't query the policy when they received the documents from UKI which referred to "commercial vehicle" insurance. He told me he'd noted this but as his wife had said business use wasn't needed, and the policy didn't provide that cover, he didn't think this was anything unusual. I understand his position but do think the documents would reasonably lead to someone realising UKI thought it was insuring a commercial vehicle, not a campervan.

UKI's provided a screenshot of its guidelines, which say that it won't offer cover for vans which have been modified into campervans under a commercial vehicle policy. So it follows that if Mrs T had disclosed the modifications, it wouldn't have provided the policies, ie entered into the contracts.

This means that technically UKI was entitled to avoid both Mr and Mrs T's policies. But I don't think allowing it to do so would produce a fair and reasonable outcome in this case.

UKI doesn't dispute that Mr and Mrs T sent proof of their no claims bonus. And that it referred to the van being a motorhome. It also had the same registration number as the vehicle Mr and Mrs T had insured with UKI. UKI has confirmed it received this before the date the original policy was due to begin. So I think the information sent to UKI gave it the opportunity to check whether the vehicle had been modified into a campervan and wasn't something it was able to cover.

UKI says its checks when it receives proof of a no claims bonus are to determine the validity of the discount offered, not the vehicle it applies to. But I don't accept this justifies the fact it didn't pick up Mr and Mrs T had actually insured a motorhome. I think UKI should have contacted them to check. It didn't and this is why I don't think allowing to it to avoid the policies and refuse Mr and Mrs T's claim produces a fair and reasonable outcome.

To put things right, I think UKI should reinstate both policies and remove any record of the cancellations from databases. And it should consider Mr and Mrs T's claim in accordance with the terms and conditions of the commercial vehicle insurance policy Mr and Mrs T actually took out. The cover under this might be more limited than the cover under a motorhome policy, but I think it's right to make this part of the fair and reasonable outcome in this case, as Mr and Mrs T did fail to take reasonable care not to make a misrepresentation. Also, UKI can deduct the premium it refunded from the amount due to settle the claim.

the responses to my provisional decision

Mr and Mrs T and UKI both responded to my provisional decision.

Mr and Mrs T broadly agree with my provisional decision. They have mentioned that having purchased new insurance policies, the premiums had been significantly higher than when their vehicles were insured with UKI. So, they want any references to the policies being cancelled to be removed from insurers' databases.

UKI disagree with my provisional decision. It believes I've placed too much weight on the no claims discount proof it received. It says, while the proof of no claims discount had the same registration number as the vehicle insured with it, registration numbers can be transferred between vehicles. UKI also don't think the information on the no claims discount proof was sufficient to show it was the same vehicle as it was insuring. It doesn't think that document alone was sufficient to mean it should have realised the vehicle had been converted to a motorhome or to have caused it to make further enquiries.

my findings

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

I know Mr and Mrs T remain certain that Mrs T didn't make a misrepresentation when she spoke to UKI to take out the policy. But I'm satisfied she did, for the reasons I've outlined in my provisional decision. Neither party has presented any new evidence to change my view on this. So I still think Mrs T made a qualifying misrepresentation when she said no modifications had been made to the vehicle. And again at renewal by not letting UKI know the information it held was incorrect.

I accept UKI's point about a vehicle registration being transferrable. But I don't think this is a valid reason for them not picking up on the fact Mr and Mrs T were insuring a campervan. The registration number of their vehicle appears to be a generic number, and not personalised in any way. And while the model of the vehicle isn't listed on the no claims discount proof, I remain satisfied there was enough information on that document for UKI to have noted it was more likely than not to be the same vehicle as it was insuring. And to realise the vehicle had been modified into a motorhome.

It also appears UKI is making a different argument now to that which it made previously. It previously said it only checked the registration number to confirm the no claims discount was valid. It now seems to argue that, even if it had checked the document in more detail, it wouldn't have had sufficient grounds to think it was the same vehicle. But as I've said, I'm satisfied there was enough detail for it to have, at minimum, had reason to ask Mr and Mrs T whether the vehicle had been modified into a motorhome. Therefore, I remain satisfied the fair and reasonable outcome to this complaint is as I set out in my provisional decision.

Mr and Mrs T want the references to the cancelled policies to be removed from insurers' databases. I've previously said this should be done and haven't seen anything to change my thinking on this point. And this means they can contact their new insurer about having the premium they paid amended retrospectively to reflect this.

my final decision

For the reasons set out above and in my provisional decision, my final decision is to uphold the complaint. I order UK Insurance Limited to:

- Retrospectively reinstate the policies held by Mr and Mrs T for their campervan.
- Consider the claim for damage to the campervan accordance with the terms and conditions of the commercial vehicle insurance policy. UKI may deduct the premiums refunded from any claim settlement.
- Remove any record of the policies being avoided from internal and external databases.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 10 February 2020.

Ben Williams
ombudsman