

complaint

Ms N is unhappy that Pinnacle Insurance Plc is pursuing her for a debt after a court judgement was made regarding her motor insurance policy.

background

In 2014 Ms N took out motor insurance with Pinnacle and included a named driver on her policy. In April 2015 the insured car was involved in an accident and several other vehicles were damaged. The named driver admitted liability for the accident and Ms N made a claim under her policy with Pinnacle.

In assessing Ms N's claim, Pinnacle thought she'd made misrepresentations when she took out the policy. It said she'd said she was the registered owner of the car, when it was in fact the named driver; that she gave an incorrect address for herself; and that she didn't tell it about the named driver's driving convictions. So on 1 May 2015 Pinnacle avoided Ms N's policy - in other words, cancelled it as if it had never existed – and refused her claim as a result of this. On 28 May 2015 Pinnacle made the first of a series of payments to the third parties involved in the accident to cover their claim and car hire costs. Pinnacle made the last such payment on 27 November 2017.

On 28 November 2017 Pinnacle obtained a court judgement against Ms N – the judgement said Ms N had made an '*innocent*' misrepresentation and that Pinnacle was entitled to avoid her policy. It also said Ms N should pay 50% of Pinnacle's fixed legal costs, amounting to £321.50, which Ms N paid.

In January 2018 Pinnacle began asking Ms N to repay the claim and car hire costs it had paid to the third parties, along with its associated legal, hire negotiation and motor assessor costs. As Ms N didn't pay, Pinnacle passed this debt to its debt collectors in February 2018, and debt recovery costs were then added to the total amount Pinnacle was asking Ms N to repay. On 26 June 2019 the total Pinnacle said Ms N owed stood at £23,225.11.

Ms N didn't think this was right, as she'd paid what the court told her to. So she contacted our service and we passed her concerns to Pinnacle. It said it had already provided her with its final response about her policy being avoided, and that this matter had then been decided by a court. Ms N thought Pinnacle hadn't addressed her complaint that it shouldn't be pursuing her for anything, and our service agreed it hadn't. So we started investigating but said we wouldn't consider the policy being avoided because a court had already decided that.

Our investigator thought Pinnacle was required by law to settle the claims made by the third parties and that those were the costs it was looking to recover from Ms N. Our investigator thought Pinnacle was entitled to do this, but had included some costs it shouldn't have - £2,841.94 for unexplained costs, £4,396.40 of legal costs, and £78 for an engineer's report. After deducting these, our investigator said Pinnacle was entitled to ask Ms N to repay the remaining amount.

Pinnacle disagreed. It said the unexplained costs were debt collection fees it was entitled to ask Ms N for because she hadn't paid what she owed or contacted it about that. Pinnacle said it was also entitled to ask Ms N for the legal costs it incurred in settling the third party claims, and that these were different to its legal costs of taking Ms N to court for misrepresentation, which was what the court had ordered her to pay.

As Pinnacle disagreed, this complaint was passed to me for decision. I asked Pinnacle for some further information, including details of the costs it was asking Ms N to pay and the timeline of events. And after considering all the evidence provided to me, I informally shared my thoughts with Ms N and Pinnacle. I said:

- Pinnacle didn't have a legal obligation to pay the third party claims, but hadn't acted unreasonably by doing so.
- Pinnacle should remove the £4,396.40 legal costs it was seeking from Ms N, as it would have paid these in any case. And it should remove the £260 hire negotiator costs and the £180 motor assessor costs, as these were part and parcel of its role as an insurer. And it should also remove the £3,542.81 debt recovery costs, because it passed the debt to a debt collector after an unreasonably short length of time and that this fee was disproportionate and inappropriate in the circumstances.
- It wouldn't be fair and reasonable to ask Pinnacle to refund Ms N's premiums.

In response, Ms N said she wasn't in a financial position to make any payments to Pinnacle. She said Pinnacle paid the claims after avoiding the policy, so it was asking her to pay for its mistakes. And she queried exactly what she was being asked to repay.

In its response, Pinnacle said it did have a legal obligation to pay the third party costs after avoiding the policy. And it was fair to ask Ms N to pay its legal, hire negotiator and motor assessor costs because it only incurred these as a result of her misrepresentation. And it wasn't her insurer – so it wouldn't have had to pay them otherwise. It agreed to waive the debt recovery costs so far but said Ms N might start to incur further debt recovery costs if she didn't repay its claim and hire costs.

In further communication with Ms N and Pinnacle, I confirmed the claim and hire costs Pinnacle was asking Ms N for totalled £15,167.40. I asked Pinnacle about the basis on which it engaged its solicitors, hire negotiators and motor assessors. And I told Pinnacle I'd noted a court had already considered the matter of its legal costs and decided Ms N should only pay £321.50 of them, which she'd already done.

Pinnacle confirmed it had contracts with its solicitors, hire negotiators and motor assessors but didn't employ them itself. It said Ms N's misrepresentation and the accident left it open to third party liabilities, so it had to obtain the court judgement as part of the claim process in order to limit its losses. And that the Road Traffic Act required it to deal with claims. It said it had already taken into account the £321.50 legal costs Ms N had already paid, but that this could again be deducted in any recalculation of the legal fees.

I'm now in a position to make my 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.

Before I explain my findings, I'd like to clarify that I'm not considering the matter of Ms N's policy being avoided, as that's already been decided by a court - though I will sometimes need to refer to this. Instead, I'm only considering the £23,225.11 Pinnacle is currently asking Ms N to repay. And while I've considered all the comments and evidence Ms N and Pinnacle have provided, my decision will only address what I see to be the key points.

I'll firstly address the repayment of third party claims and associated costs. Pinnacle says Ms N's policy entitles it to take the action it has, because it says that if Ms N provides inaccurate or misleading information, then it can cancel or avoid her policy, recover from her any costs incurred by it or its agents, and keep the premiums she paid. I can see the policy terms and conditions do say this. But Pinnacle avoided this policy about a month before it started making claim payments to the third parties. And when a policy is avoided, that means the policy is treated *as if it had never existed*. So I don't think it's reasonable for Pinnacle to rely on the policy terms in order to seek repayment from Ms N, as the policy didn't exist when it started paying the claims.

Pinnacle says it's also relying on general legal principles in seeking repayment from Ms N. I asked Pinnacle what legal principle it's relying on and it said *'The policy document states that "If the Underwriters are required to pay a claim under Road Traffic law or the law of any country in which the policy operates the Underwriters reserve their right to recover from You". This states that we reserve our right to recover the costs. It is a basic legal principle in civil law that if someone causes you to incur a loss (for example by taking out a policy when misrepresenting the risk) then you have a legal right to recourse against them to recover those losses.'* I think Pinnacle is partly relying on the policy terms here but, as I've said, I don't think that's reasonable because the policy was cancelled as if it had never existed.

And while I acknowledge that Pinnacle says it had a legal obligation to pay these third party claims, I don't agree that it did. That's because once it had avoided the policy, it would only have to pay third party claims in the circumstances set out in the Motor Insurance Bureau Articles of Association ("MIB") and the Road Traffic Act ("RTA"). The MIB and RTA only apply if any of the third parties had obtained a judgement against either Ms N or the named driver on her policy, and Pinnacle says it's not aware of any such judgements in this case. And I've seen no evidence to suggest any such judgements. So I don't think the MIB or RTA were triggered here.

For those reasons, I don't think Pinnacle can rely on the policy and I don't think it had a legal obligation to settle the third party claims. Having said that, I don't think Pinnacle acted unreasonably in beginning to settle the third party claims. That's because there would have been uncertainty about whether it might become the RTA insurer, and because it was trying to limit the claim costs by acting quickly. And I've seen nothing to suggest the claim and car hire costs it paid to the third parties were excessive or unnecessary. So while I acknowledge Ms N feels Pinnacle is asking her to pay for its mistakes, I don't think it's unreasonable for Pinnacle to ask her to repay the claim and hire costs totalling £15,167.40 it paid to the third parties. Though I do appreciate this will put her in a difficult position.

However, I think some of the costs Pinnacle is asking Ms N to repay aren't fair or reasonable. I've set them out below:

- *Legal costs totalling £4,396.40.*

Pinnacle says it only incurred these legal costs because Ms N made a misrepresentation. But I think a court has already considered the matter of Pinnacle's legal costs. That's because the invoices Pinnacle provided as evidence of these costs are dated between 30 June 2017 and 23 November 2017, before the court judgement it obtained against Ms N on 28 November 2017. And those invoices include court fees costs totalling £643.

The judgement dated 28 November 2017 ordered Ms N to pay 50% of Pinnacle's fixed costs, which amounted to £321.50 – in other words, 50% of its £643 court fees. Pinnacle says the £321.50 can be deducted from the legal costs its asking Ms N to pay, but a court has already considered Pinnacle's legal costs and decided Ms N should only pay £321.50 of them, which she's already paid. So I don't think it's reasonable for Pinnacle to now ask Ms N to repay its full legal costs of £4,396.40.

- *Hire negotiator costs totalling £260 and motor assessor costs totalling £180*

Pinnacle again says it only incurred these costs because of Ms N's misrepresentation and that it's not her insurer. But I think these type of costs are part and parcel of providing insurance. So even though the policy was avoided, I don't think it would be fair for Pinnacle to pass these costs to Ms N.

- *Debt recovery costs of £3,542.81*

There was only a month between Pinnacle informing Ms N of the debt and then passing it on to a debt collection agency. Pinnacle says it tried calling her a couple of times and followed with texts and email. Then, when Ms N responded and disputed the debt, Pinnacle briefly clarified what it was for. I think a month is an unreasonably short amount of time.

And Pinnacle has explained that the debt collection fee is charged at 18% of the amount being pursued, a rate it's not in control of. But the debt collectors are acting on Pinnacle's behalf and I think 18% is disproportionate and inappropriate in the circumstances, since I've explained that some of what that 18% is based on – legal, hire negotiator and motor assessor costs – isn't fair and reasonable. In any case, I note Pinnacle has now agreed to remove these particular debt recovery costs.

I'll now address the refund of premiums. The court judgement dated 28 November 2017 only mentions one misrepresentation, regarding the registered owner of the vehicle. It found that was an 'innocent' misrepresentation and it didn't make any direction about the premiums. As a court has already considered this particular misrepresentation, I won't consider it further.

But Pinnacle says Ms N made two other misrepresentations - that she gave it an incorrect home address and didn't tell it about the named driver's motoring convictions. The court order makes no mention of these two misrepresentations, which leaves the possibility that I could think about whether Pinnacle should refund the premiums.

However I've thought about what would be a fair and reasonable outcome overall, in all the circumstances of this particular complaint. A court found Ms N had made one misrepresentation. And Ms N's named driver was liable for an accident that occurred while the policy was in force, so it's not as simple as Pinnacle just avoiding the policy. For these reasons, I don't think it would produce a fair and reasonable outcome to say Pinnacle should refund the premiums Ms N has paid.

In summary, I am not intending to ask Pinnacle to refund Ms N's premiums. And I think Pinnacle should remove the following costs from what it is seeking to recover from Ms N:

- legal costs totalling £4,396.40
- hire negotiator costs totalling £260
- motor assessor costs totalling £180

- debt recovery costs of £3,542.81

So I leave it to Pinnacle and Ms N to agree repayment arrangements for the £15,167.40 of claim and car hire costs. Given what Ms N has told us about her current financial situation, she could find it helpful to contact an organisation that can provide her with support and advice about that, such as StepChange or Citizens Advice Bureau.

my final decision

For the reasons set out above, my final decision is that Pinnacle Insurance Plc should remove the following costs from what it is asking Ms N to pay:

- legal costs totalling £4,396.40
- hire negotiator costs totalling £260
- motor assessor costs totalling £180
- debt recovery costs of £3,542.81

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 12 July 2020.

Ailsa Wiltshire
ombudsman