

complaint

Mr A and Miss A's complaint concerns the way Swinton Group Ltd ("Swinton") dealt with their motor insurance policy, by taking payments from the named driver and allowing her to change the vehicle, without notifying them that this could result in the policy being declared void.

background

Mr A took out a policy online through Swinton which started in January 2009. He entered himself as the policyholder and Miss A as the named driver on the policy which lapsed at renewal.

Miss A contacted Swinton to set up a new policy in Mr A's name (as before) in March 2010, with a different insurer. Miss A was the named driver on the policy but this time she commenced payments direct. Miss A amended the policy in November 2010, as Mr A had bought her a different vehicle which was placed on cover.

In December 2010, Miss A was involved in an accident. When the insurer found out that her name was on the registration document and that she allegedly used the car more than Mr A, it voided the insurance cover. Mr A is now being pursued by the insurer to pay £12,000 for damage to the third party's vehicle and to cover personal injuries. Miss A privately paid for the repairs to their vehicle.

Our adjudicator upheld Mr A and Miss A's complaint as she was not satisfied that Swinton had provided enough evidence to show that it had asked clear questions about the main driver, owner, and registered keeper, when setting up the policy.

Swinton disagreed with the adjudicator's findings because it believed that Mr A was fully aware that cover was in his name and that the policy had been 'fronted' from the time it was arranged. Swinton stated that Miss A would have been asked a series of standard questions and that Miss A and Mr A were responsible for checking the policy documents sent out. As the matter could not be mediated it has been allocated to me for a final decision.

my findings

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

This service's long standing approach to complaints about non-disclosure is a three-stage one:

- Was there a clear question asked, and was it answered incorrectly?
- Was the insurer induced?
- What kind of non-disclosure was it?

As explained by the adjudicator the starting point for reviewing a complaint about alleged non-disclosure is whether a clear question was asked. It is up to Swinton, in this instance, to show on balance that it asked a clear question that was answered wrongly by Mr A and Miss A if the defence of no-disclosure is to be relied upon. The information gathering process has to be fair and it is not up to the consumer to volunteer information, it is up to Swinton to ask.

Swinton has been unable to provide the inception call from March 2010 and so I cannot conclude that it asked Mr A and Miss A clear questions about who the main driver was, who the owner of the vehicle was and who was the registered keeper. Swinton can only advise that the statement of insurance represents the information given to it. However, this information would have been gleaned from the questions asked over the telephone and so would carry less weight. Indeed, the information provided about the main user is in small font and could easily be overlooked and the registered keeper and owner of the vehicle was recorded as the 'Proposer' which could be misconstrued to be Miss A.

Furthermore, I would expect the importance of disclosing material facts to be clearly explained including the potential serious consequences of doing so (policy avoided or claim refused). I have insufficient evidence to show that Swinton did so in this instance.

Ultimately, as Swinton has been unable to evidence that it asked clear questions I consider the fair and reasonable outcome in this complaint is for me to require Swinton to be liable for the third party's claim and to reimburse Miss A's costs incurred in repairing her vehicle. In addition provide Mr A with a letter confirming that the policy was voided in error and Swinton should apply to the insurer to have any markers relating to the incident removed from internal and external databases.

my final decision

For the reasons set out above, my final decision is that I uphold this complaint and order that Swinton Group Ltd should be liable for the third party's claim and should reimburse Mr A and Miss A for the cost of repairs to their vehicle.

In addition, it should provide a letter confirming that the policy was voided at its error and it should apply to the insurer for any relevant marker on the general database to be removed.

Colin Keegan
ombudsman