

complaint

Mr P has complained that Tradewise Insurance Company Limited cancelled his motor trade insurance policy and are seeking to recover from him their costs in settling a third party claim.

background

Between January 2016 and July 2017, Mr P had a motor trade insurance policy with Tradewise. This covered vehicles in Mr P's possession for the purpose of motor trading. Under the terms of his policy, Mr P was obliged to let Tradewise know about any vehicles to be insured under the policy, so these could be added to the Motor Insurance Database (MID).

In August 2016, Tradewise were notified of a third party claim relating to a road traffic accident involving one of the vehicles Mr P had added to the policy. After carrying out an investigation, Tradewise settled this claim in March 2017, paying just under £3000.

In November 2016, Mr P arranged for his brother to be added to the policy as an additional driver. As I understand it, his brother helped with Mr P's business and he wanted him to be able to drive vehicles from time to time.

After completing their investigation into the August 2016 accident, Tradewise advised Mr P that his policy would be cancelled within seven days, in line with the terms of the policy. And they'd be seeking to recover from him the money they'd paid out to settle the third party claim.

They said this was for two reasons – mis-use of the policy and the non-disclosure of material facts.

They said that when he added his brother to the policy, Mr P didn't disclose that his brother had been involved in a number of road traffic accidents for which he'd been at fault (and which resulted in his insurers settling third party claims).

They also said he'd misused the policy by adding a vehicle belonging to a friend – and for which there was no other insurance - to the policy, which resulted in it being shown as insured on the MID.

Tradewise also decided to recover what it had paid out on the claim from Mr P, although it did deduct the refund of premium due when it cancelled the policy.

Mr P thought this was unfair and made a complaint to Tradewise in early July 2017. They didn't uphold the complaint.

Mr P then made a complaint to us. Our investigator looked into it and took the view that Tradewise had acted unfairly towards Mr P. She thought that the policy should be reinstated and that Tradewise shouldn't pursue Mr P for recovery of the money used to settle the third party claim.

Tradewise disagreed with this outcome and asked for an ombudsman to make a final decision.

Because I disagreed with our investigator's view, I decided to issue a provisional decision before I make my final decision. This allowed both parties to comment on my thinking before I make my final decision – which is the Financial Ombudsman Service's last word on the case.

my provisional decision

In my provisional decision, I said:

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

I have to decide whether it's fair and reasonable for Tradewise to cancel Mr P's policy, bearing in mind the relevant legislation, industry standards and the terms and conditions of the policy itself.

I also have to decide whether it's fair and reasonable for Tradewise to seek to recover what it paid on the third party claim arising from the accident in August 2016 from Mr P.

I've listened to the recording of the telephone conversation which Mr P had with the insurance broker who arranged the policy, when he added his brother as an additional driver. Mr P said – and then later confirmed – that his brother hadn't been involved in any road traffic accidents in the previous three years.

When he was asked this question, Mr P paused for a while and then said, as if thinking aloud, "...don't know if it's been over three years...I think it's been longer than that....". He then stated more clearly that his brother hadn't had any accidents in the previous three years – and confirmed this later when his answers were read back to him.

In fact, Mr P's brother had been involved in three accidents during the relevant time - in June 2014, June 2016 and July 2016. All of these resulted in claims.

Mr P was also sent a statement of fact by the broker after their telephone conversation. This clearly stated that the brother hadn't had any accidents in the previous three years.

Mr P lived at the same address as his brother – and he'd involved him in his motor trading activities. And his brother had had two accidents only 4 or 5 months before the date of the phone call. So I think Mr P was aware of these accidents and should have told the broker about them. And – if he wasn't sure whether his brother had had any accidents he had a duty to check. So, I think it's clear Mr P provided Tradewise with inaccurate information – and didn't later correct it when he got the statement of fact.

When Tradewise found out Mr P had failed to disclose these accidents, it relied on the policy term which gave it the right to cancel the policy by giving Mr P seven days' notice in writing. And – because I think it's clear Mr P either deliberately or carelessly withheld information – I think Tradewise's decision to cancel Mr P's policy was reasonable and in line with the policy terms.

It's not disputed that Mr P had added a recovery vehicle to his policy. And – based on the evidence provided by Tradewise – I'm satisfied it wasn't insured elsewhere.

After being notified of a third party claim in August 2016, which the other insurer said was a result of an accident involving the recovery vehicle, Tradewise contacted Mr P. They say he told them he hadn't been involved in an accident and the vehicle was in his possession at the relevant time. The implication being that the vehicle was not the one involved in the accident. This exchange is recorded in Tradewise's claim history log. The notes there appear to have been recorded at the time of the call.

At that point, Tradewise asked to inspect the vehicle. This is because if it wasn't damaged - and there were no signs of very recent repair - it would have helped to prove it hadn't been involved in the accident. Mr P agreed a date and time for inspection by Tradewise's contractor. But he failed to turn up when agreed. A further date and time was agreed, but again, Mr P didn't turn up.

Later, Tradewise were able to obtain photographs which showed that the vehicle involved in the accident had in fact been the recovery vehicle Mr P had added to his policy.

Tradewise's claims history log shows that Mr P rang them (in September 2016). And he said the vehicle was owned by a friend, that he didn't always have access to it and that he didn't know where the vehicle was on the date of the accident. He also said he'd try to obtain details of his friend's insurance details so that the claim could be redirected. This version of events clearly contradicts the one given by Mr P immediately after the accident in August.

The friend involved in the accident appears to be the registered keeper of the vehicle.

When Tradewise rang what appeared to be the friend's phone number, the person who answered denied the accident had happened, but said that his vehicle was covered by his insurance policy and undertook to provide details – which he never did. He also said he was a friend of Mr P.

In January 2017, as Tradewise's investigation continued, they have records to show that Mr P contacted them twice. On 9 January, he told them he'd had no contact with the vehicle's owner for a long time and he'd only used the vehicle a couple of times. On 12 January, three days later, he contacted them to ask for a quote for adding his friend, the vehicle's registered keeper, to the policy as he was possibly going to be Mr P's business partner.

In early July 2017, after being told Tradewise were cancelling the policy, Mr P contacted them to say that the vehicle belonged to his friend, who had now left the country. He made a formal complaint to them, stating that he'd asked for the vehicle to be removed from his policy and MID, but Tradewise had failed to action this for him (Tradewise – and his broker - say they have no record of any such request). He also complained to us, telling us that he'd forgotten to remove the vehicle from his policy.

Tradewise say Mr P contacted the broker on 11 July 2017 to ask that Tradewise reconsider the policy cancellation. At this point he said the driver involved in the accident was not his friend and the vehicle was on the policy because he'd intended to buy it.

So, I think Mr P has misled Tradewise during their investigation into the accident. In summary, he's said, at different times:

- (a) the vehicle was in his possession at the time of the accident;
- (b) it was his friend's, he didn't always have access to it and he didn't know where it was at the time of the accident;

- (c) it belonged to a contact he'd not been in touch with for a long time and he'd only used it a couple of times.

These different versions of events are contradictory. The latter explanation also contrasts with Mr P's January 2017 request for a quote for adding the registered keeper to his policy. And if either (b) or (c) is true, it is difficult to see why Mr P agreed to allow Tradewise to inspect the vehicle.

Mr P has also given several contradictory explanations for why the vehicle was on the policy at the time of the accident:

- (a) he was the sole user of the tow vehicle;
- (b) he forgot to take the vehicle off cover;
- (c) he asked for it to be taken off cover and this wasn't actioned; and
- (d) he was intending to buy the vehicle.

So I think the evidence suggests it's likely that the registered keeper of the recovery vehicle was driving it at the time of the accident. And I think it's most likely he's well known to - and a friend of - Mr P. I think it's also most likely Mr P knew he was driving the vehicle at the time of the accident and that he knew it shouldn't be insured under his policy.

I think it's also clear that Mr P hasn't been honest with Tradewise in his dealings with them on the claim and this has hindered their investigation.

I think this evidence also shows Tradewise's decision to cancel Mr P's policy was reasonable. And – in view of Mr P's lack of clarity over the ownership of the recovery vehicle when Tradewise investigated the claim – and in view of it being unclear whether Mr P really should have put it on cover under his policy in the first place – I also don't think it's appropriate for me to interfere with Tradewise's action to recover what's outstanding on the claim.

In summary, for the reasons set out above, I think Tradewise's decision to cancel Mr P's policy was reasonable and it's not appropriate for me to interfere with their recovery action against him for the amount paid on the third party claim.

the responses to my provisional decision

Tradewise responded to my provisional decision to say they had nothing further to add.

Mr P responded to say that he wasn't happy with the provisional decision, but he'd given us all the information we needed and had nothing more to add.

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've also considered again the conclusions I reached in my provisional decision. Having done so, I haven't changed my mind. I know that Mr P will not be happy with the outcome, but I'm not going to uphold his complaint.

my final decision

For the reasons I gave in my provisional decision, set out above, 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 P to accept or reject my decision before 27 July 2018.

Neil Marshall
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