Financial Ombudsman Service

complaint

Mr G complains that Collingwood Insurance Company Ltd charged him its short-term cancellation rate when he cancelled his commercial motor insurance policy for his taxi, leaving an amount owing. He wants Collingwood to stop pursuing him for the outstanding amount.

background

Mr G is a sole trader taxi driver. He took out a commercial motor insurance policy with Collingwood for an annual premium of £3,944.32, funded by a credit agreement with a finance company. He paid a deposit of £986.33 and chose to pay the remainder of the policy premium by direct debit. He cancelled the policy after 24 weeks and he is now being pursued by Collingwood for £388.25, which it said was the outstanding balance after it had applied its short-term cancellation rate. Mr G thinks that the amount he paid up until the date of cancellation should cover the 24 weeks that he was on cover.

The adjudicator recommended that the complaint should be upheld. She thought that whilst Collingwood could fairly charge Mr G a reasonable cancellation fee, it should treat him as a consumer, he being a sole trader, and fairly charge him the relevant cancellation rate, pro-rata for his time on cover, rather than that which it applied to businesses, which was 70% of the annual premium for the time on cover.

Collingwood responded that pro rata time on risk charges are not proportionate to the service provided by a provider of commercial insurance, particularly taxi businesses. It added that short period rates are not punitive, but are representative of the unevenness of risk and Collingwood's costs, which are loaded towards the start of the policy term because of broker's fees etc. It thought that the adjudicator should not apply consumer regulations to a commercial policy-holder who had used a broker to purchase his policy.

my findings

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

The adjudicator thought that Mr G should be considered as an unsophisticated purchaser, and therefore be treated as a consumer, even though he purchased a commercial motor insurance policy. In this case, although acknowledging that the terms of the UTCCR (Unfair Terms in Consumer Contract Regulations, 1999) do not apply to Mr G as he holds a commercial policy rather than a consumer one, our approach would be when considering what is fair and reasonable to ensure that the amount charged at cancellation should not penalise Mr G. We would also consider whether the short term cancellation rates created a significant imbalance between Mr G and Collingwood.

As Mr G is a sole trader taxi driver without legal resources, I find that, even though I accept that he used the services of a broker, I am persuaded by the adjudicator's opinion. I find that I agree that the cancellation charges applied by Collingwood should not penalise Mr G for cancelling his policy by creating an imbalance when utilising short term rates.

The nature of the contractual short term rates are such that I consider them to be significant and so, they should have been specifically pointed out at point of sale to allow Mr G to decide whether he wanted to purchase the policy with the rates as a contractual term, or seek a policy that did not contain such rates. Collingwood asserted that this is the charge it makes as set out in the policy terms and conditions. The rates are explained on page 27 in the cancellation section of the Policy Booklet, but Collingwood does not demonstrate that it specifically drew them to Mr G's attention in any other way. I find that it is not sufficient for Collingwood to simply rely on the fact that they were contained in policy documentation that Mr G was sent and therefore that they were not sufficiently pointed out to him.

Our view is that there is nothing inherently unfair about an insurer charging a reasonable cancellation fee nor with charging reasonable short-term rates where these can be shown to reflect objective actuarial evidence about the risk, e.g. that a higher charge is justified during the early stages of a policy due to the increased risk of claims arising during that period. It follows that Collingwood should be able to demonstrate that the short term rate it has charged Mr G reflected the costs of setting up, administering and cancelling the policy, or that it reflected a greater risk during the initial stages of the policy term. I find that it would be unfair that Collingwood profits more than the risk it has been asked to insure.

In this case I have seen no evidence that demonstrates that 70% of the total cost of cover is a reasonable reflection of the actual short-term risk for six months coverage. Collingwood said that it had more expenses at the beginning of the contract but it did not quantify these. The management information that it provided to support its charges simply shows that commercial insurance produces more claims than personal insurance, but it does not show that these claims are more frequent in any period of the annual cycle. It seems that the short term rate charged starts to look like a penalty for a consumer who chooses not to continue with cover for the full period initially agreed. I find that this would be unfair and unreasonable in the context of a non-negotiated consumer contract which, as found above, I consider is how Mr G's contract should be treated.

I find therefore that as Collingwood did not sufficiently explain its charges to Mr G and has not supported this with underwriting evidence to show that risks are weighted differently throughout the year based on the likelihood of claims, I do not support its decision. It follows that I find that it is not fair for Collingwood to apply the short term rate, but what is fair is that it charges Mr G a pro rata amount for the time on risk plus a fair and reasonable cancellation fee as set out in the policy's terms and conditions.

I can see that Mr G has been caused distress by having a debt collector pursue him for the outstanding amount that Collingwood said he owed it. I find therefore that it is reasonable that Collingwood pay Mr G £100 compensation for his distress, which is in keeping with the amount of compensation that we would recommend in such circumstances.

my final decision

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

1. To calculate the cancellation of Mr G's policy on a pro-rata basis for its duration and refund Mr G the amount that he has paid in excess of this, adding interest at 8% on the amount to be refunded from the date of the cancellation to the date of the settlement, less tax if properly deductible. Collingwood is entitled to deduct from this refund a fair and reasonable cancellation fee as identified in the policy terms and conditions.

2. To pay Mr G an additional £100 compensation for the distress and inconvenience caused as a result of being pursued by a debt collector.

Phillip Berechree
ombudsman