complaint

Mr S complains about Southern Rock Insurance Company's decision to reject his motor insurance claim and void his policy (treat as if it never existed).

background

Mr S was involved in a car accident. Southern Rock sent an engineer to examine his car. The car was found to have non-standard alloy wheels which Southern Rock didn't know about. Southern Rock said had it known it wouldn't have sold the policy to Mr S as it didn't accept modifications to the vehicle such as the alloy wheels. So, it cancelled one year's policy (gave a refund) and voided the next year's (no refund).

Southern Rock explained that it had asked a clear question and that Mr S at best was reckless not to disclose the alloy wheels. Part of its reasoning was based on the fact that the wheels had the emblem of a different vehicle make and this should have been obvious to Mr S.

Mr S said he bought the vehicle second-hand and didn't realise the wheels were a modification. He said he didn't think it was made clear that he needed to check the wheels and if it had been he would have. He also sent us a letter from the previous seller which said they didn't know the wheels were a modification as they'd bought the vehicle with the wheels already on.

The investigator explained Mr S had taken reasonable care when answering the question about modifications when buying the policy. She said the pictures of the wheels weren't clear they were for another make of vehicle. And she accepted that the seller's letter was relevant evidence in support of Mr S's explanation. So she though a fair outcome was for Southern Rock to:

- Pay Mr S the market value of the car as it was declared a write off (less salvage cost as he kept the car, excess and any outstanding premiums on the policy).
- Pay 8% simple interest from the date of the incident to the date of payment.
- Cover the third party costs as it would have had it dealt with the claim under the policy.
- Give Mr S a letter explaining the policies were cancelled and voided in error – and a pro rata refund for the overlap insurance period, plus 8% simple interest.
- Take back the £333.80 debt which has been passed to a third party and not pursue Mr S for it.
- Remove the record of cancellation on the first policy and voidance on the second policy from all internal and external databases.
- Compensate Mr S £250 for the delays and the inconvenience and distress he's suffered.

Southern Rock disagreed. It said that it was clear Mr S had failed to take care as required by the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). Southern Rock believed a clear question was asked and found it very hard to accept that Mr S was not aware of the non-standard wheels.

my findings

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

When considering what's fair and reasonable in the circumstances I need to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the time.

The relevant law here – the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') - makes clear, that consumers must take reasonable care not to misrepresent their particular circumstances to an insurer and if they do, this is known as a 'qualifying misrepresentation'.

Section 5 of CIDRA goes on to explain that a qualifying misrepresentation is either:

> "(2)…deliberate or reckless if the consumer—
>
> (a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and
>
> (b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.
>
> Or
>
> (3) …careless if it is not deliberate or reckless".

CIDRA makes clear that it's for the insurer to show that a qualifying misrepresentation was deliberate or reckless but there are also the following presumptions that can be made (unless the contrary is shown):

- the consumer had the knowledge of a reasonable consumer, and
- the consumer knew that a matter about which the insurer asked a clear and specific question was relevant to the insurer.

The evidence Southern Rock has sent about the modification question asked shows that (online) Mr S was asked if the vehicle had been modified in anyway. And there's a brief note alongside saying this includes any change from when the vehicle was first supplied. A list of example parts is given but doesn't refer to wheels. When the policy renewed a year later it's said that Mr S was asked over the phone whether the vehicle had been modified in any way. Mr S said "no" but there was no explanatory help to indicate what items might have been modified.

The standard of care required is that of a reasonable consumer. The breadth of the question asked could include a number of modifications that aren't apparent to many reasonable consumers. The issue here is the wheels – many vehicles now come with alloy wheels as standard and so I don't think it's necessarily obvious to a reasonable consumer that these are a modification. That said *if* they are 'clearly' marked with a different manufacturer's emblem this may be something a reasonable consumer would pick up.

I think the question as asked is sufficiently clear for modifications that are obvious. I've looked at the pictures of the wheels and they don't appear to be in particularly good condition. I've enlarged the images and still can't make out the emblem. On this basis I can't say that Mr S, or a reasonable consumer, should have reasonably noticed whether the wheels were a modification from the original condition.

Mr S has sent us a letter from the person he says sold the car. The seller says they bought the car in the same condition and the wheels weren't something they had modified. Taking all this into account, I think Mr S took reasonable care when he said the vehicle hadn't been modified.

Mr S has suffered distress and inconvenience as a result of the way Southern Rock has dealt with the matter, particularly being pursued for a debt and worrying that he might be liable to pay the third party claim costs. I think £250 compensation fairly reflects what he's been through.

my final decision

I uphold Mr S's complaint against Southern Rock Insurance Company. I require it to do the following:

- Reinstate Mr S's policy which means it runs the full term from October 2016
- Reimburse any overlapping insurance that Mr S took out after his policy was voided (subject to Mr S providing evidence of same) and add 8% simple interest from the date he paid the overlapping insurance to the date of payment.
- Take back the debt passed to a third party and not pursue Mr S for it.
- As the car was written off pay Mr S the market value as at the date of incident (less the salvage cost as he kept the car, excess and any outstanding premiums on the policy) and add 8% simple interest from the date of the incident to the date of payment.
- Deal with any third party claim as it would have done under the policy rather than the Road Traffic Act.
- Remove the record of cancellation on the first policy and voidance on the second policy from all internal and external databases.
- Give Mr S a letter stating the policies were cancelled and voided in error and confirming records have been amended.
- Compensate Mr S £250 for the delays and the inconvenience and distress he's suffered.
- Pay the compensation within 28 days of the date on which we tell it Mr S accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.
- HM Revenue & Customs requires Southern Rock Insurance Company to take off tax from interest. Southern Rock must give Mr S a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 September 2017.

Sean Hamilton
ombudsman