DRN-3552959

The complaint

Mr E complained that Southern Rock Insurance Company Limited ("Southern Rock") declined his claim following a road traffic collision.

What happened

Mr E took out a motor insurance policy with Southern Rock in May 2019. He was covered to use his car for social, domestic and pleasure purposes.

Mr E was involved in a car accident in November 2019. He submitted a claim to Southern Rock. He told it he was travelling to his place of work to collect some files he had left there when the accident happened.

Southern Rock told Mr E his policy didn't provide cover for travelling to his place of work, so it declined the claim. It later told him that it had decided to settle with the third party insurers on a 50/50 basis and that he would need to cover costs of over £3,000.

Mr E complained to Southern Rock about it declining to cover the claim. He said it was only on very rare occasions, such as on the day of the accident when he needed to pick up some files, that he used his car to travel into work. He said it was cheaper and more convenient for him to catch a train. Mr E said when he took out the policy he didn't think he fitted the description of commuting, given how regularly he used public transport.

Mr E thought Southern Rock should have followed the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA") when dealing with this matter.

Southern Rock responded to Mr E's complaint in August 2020. It said when Mr E took out the policy online, he was asked to select the type of cover he wanted, and he selected "social only". Southern Rock said it cannot upgrade the level of cover after an accident to the level of cover that a consumer intended to purchase. It said it was Mr E's responsibility to choose the appropriate level of cover.

Mr E then complained to this Service. Our Investigator upheld the complaint. He said Southern Rock should have relied on CIDRA when dealing with Mr E's claim, as it was the relevant law here. Our investigator concluded that while Mr E made a misrepresentation about how he used his car, this was not a qualifying misrepresentation and so Southern Rock wasn't entitled to decline his claim. He suggested the Southern Rock deal with Mr E's claim in line with the remaining terms of the policy and pay Mr E £200 compensation.

Southern Rock didn't agree with the outcome and so this came to me for a decision.

What I've decided – and why

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

Southern Rock said it declined this claim because Mr E's policy didn't cover him for commuting to and from work, and this was what Mr E was doing when the accident happened. Having seen the relevant policy documents, I can see that this is the case – Mr E's policy provided cover when his car was used for social, domestic and pleasure purposes. So Southern Rock said it didn't think CIDRA should be used here, as it's simply the case that Mr E didn't have the right sort of cover in place when he had the accident. The question here is whether Southern Rock acted fairly when it took this approach, and I don't think it did.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer. If a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For a misrepresentation to be qualifying it would have to have made a difference to the terms the insurer would have offered.

Whether or not a misrepresentation has been made depends on the question asked at the application stage. If a consumer is simply asked to select what cover they want, then it would not be fair to use CIDRA, as the information provided by the consumer isn't used by the insurer to decide what cover to offer. But if the consumer is asked what they use their car for and they make a misrepresentation about its use, then CIDRA applies.

In Mr E's case, as part of his application, he was asked "What do you use the car for?". He was then provided with options to choose from, and he chose "social". So Mr E wasn't asked to select what cover he wanted, he was asked a question about how he uses his car and, as outlined in more detail below, I think he answered this incorrectly. It is this type of situation that CIDRA is in place to address – where a policy holder has been asked a question and answered incorrectly. So I'm satisfied Southern Rock should have used CIDRA when assessing Mr E's claim.

The first step when applying CIDRA is to decide whether a misrepresentation was made. And I'm satisfied one was made here. Mr E was asked a clear and unambiguous question about how he uses his car and he provided incorrect information. I can see that other options were offered in answer to the question about what Mr E uses his car for, and one of these was "social and commuting". I think Mr E should have chosen "social and commuting" as his answer, as he occasionally uses his car to travel to and from his place of work. I can also see that guidance for answering the question was provided, which described "social only" as "…covers normal day to day driving, but not driving to or from a place of work". While I appreciate Mr E saying he doesn't think occasional travel into work is considered "commuting", I think it's clear that "social only" does not cover any travel into work. So I'm satisfied Mr E didn't take reasonable care when answering this question and misrepresented his circumstances.

The next step is to look at whether this was a qualifying misrepresentation – so if Southern Rock had known at the application stage that Mr E used his car for commuting, would this have made a difference to the policy offered by it to him, whether in relation to the cost or the terms.

Southern Rock has said it would have provided commuting cover to Mr E at no extra cost if it had known he also used his car to travel to and from work. So if Mr E had taken reasonable care and answered the question correctly, it wouldn't have made a difference to Southern Rock. This means Mr E didn't make a qualifying misrepresentation under CIDRA and, in these circumstances, Southern Rock wasn't entitled to decline Mr E's claim in the way it did.

I'm satisfied that a fair outcome here is for Southern Rock to reconsider Mr E's claim, subject to the remaining terms of the policy, as if he had selected cover for commuting. I understand that Mr E hasn't been able to afford to have repairs carried out to his car and so has been inconvenienced by having to drive around in a damaged car. For these reasons, I agree with the amount of £200 compensation for distress and inconvenience suggested by our Investigator.

My final decision

I require Southern Rock Insurance Company Limited to reconsider Mr E's claim in line with the remaining terms of the policy, as if he had selected cover for commuting, and pay Mr E £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 18 July 2022.

Martina Ryan
Ombudsman