

complaint

Mr U complains that he is paying premiums on two policies for the one motorcycle, after Swinton Group Ltd cancelled his motorcycle insurance policy and then issued a new policy, instead of just reinstating the first policy.

background

In July 2013, Mr U took out an insurance policy for his motorcycle through Swinton, acting as his broker. He paid a deposit of £29.11 and agreed to pay the balance in instalments by direct debit. Swinton sent him a credit agreement setting out the terms for this and asked him to sign and return this, but he did not do so.

In August 2013, Mr U defaulted on the first instalment payment. He asked for a payment extension, which Swinton agreed, but said he had to pay the instalment by 30 August 2013.

Mr U failed to pay by that date so Swinton sent him notice cancelling the policy. Swinton said Mr U still owed £201.32 for this policy, and agreed that Mr U could pay this by instalments. It also arranged a new policy for Mr U's motorcycle, and said he could pay the premium for this by instalments. So Mr U was paying two sets of instalments for his motorcycle.

Our adjudicator considered that when, even after a time extension, Mr U failed to pay the first premium, Swinton was entitled to cancel the policy. When Mr U later asked Swinton to rearrange cover for his motorcycle, Swinton could not reactivate the cancelled policy – it had to set up a new policy. So Mr U still owed money for the first policy as well as the premium for the new policy.

Swinton said that the amount Mr U owed under the first policy was £201.32. The adjudicator considered that most of this was reasonable, apart from a charge of £24 for Mr U not signing and returning the credit agreement. The adjudicator pointed out that Swinton had proceeded as if the credit agreement had been signed and returned, including charging Mr U interest.

As Swinton had not been prejudiced by Mr U not returning the signed credit agreement, he did not consider it was fair for Swinton to make this charge.

Swinton responded to say, in summary, that the charge was set out clearly in the sales letter, and in its terms of business, which had been supplied to Mr U, and he had not made any complaint about the charge. It did not consider it needed to justify the charge further.

It also pointed out that in a different complaint considered by another adjudicator, this service had said that it was fair and reasonable for Swinton to apply this charge.

my findings

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

I agree that when Mr U failed to pay the first instalment due for his first policy, Swinton was entitled to cancel this policy, which it duly did. However, he still owed money under his first policy. When he wanted to insure his motorcycle again, the old policy could not be reinstated. So the result was he owed money under both his old policy and his new policy.

Swinton said he owed £201.32 for the old policy. I consider that Swinton was entitled to charge the items which made up this amount, with the possible exception of two amounts:

- interest of £33.04
- a charge of £24 for not returning the credit agreement duly signed.

The adjudicator said the interest had been reduced in respect of the lower amount now claimed, which Swinton was collecting by direct debit, and so he considered the charge was fair. However, as Swinton had proceeded as if the credit agreement had been signed and returned, including charging interest, he did not consider it was fair to charge Mr U £24 for not returning the credit agreement.

It seems to me that whereas Swinton's right to charge the other items included in the £201.32 arose under its terms of business, its right to charge interest arose under the credit agreement. If this was not signed and returned, it would have no right to be paid interest. In these circumstances it would be reasonable to include in its terms of business a charge of £24 if the credit agreement was not signed and returned. This would compensate it for the loss of interest and its additional work in recovering the outstanding premium. Swinton has not suggested any other justification for the charge.

However, in this case, Swinton seeks to recover both the interest and the charge. Like the adjudicator, I do not consider that is fair and reasonable. While it would be reasonable for me to require Swinton to waive either the interest or the charge, I conclude that a fair resolution of this complaint is that Swinton waives the charge of £24.

Finally, I remind Swinton that this service considers every complaint individually on its own facts to decide what is fair and reasonable in that case. So the fact that in another complaint an adjudicator did not raise an objection to Swinton making a charge for the customer's failure to sign and return a credit agreement, does not preclude me from deciding that in the present complaint it would not be fair for Swinton to make the charge.

my final decision

For the reasons I have set out above, my decision is that I uphold this complaint in part. I order Swinton Group Ltd to waive payment of the charge of £24 for Mr U failing to sign and return the credit agreement for his first insurance policy.

Lennox Towers
ombudsman