

complaint

Mr S complains that his insurance broker, Devitt Insurance Services Ltd (“Devitt”), misled him into believing that his motorbike insurance policy would automatically renew without any further action being needed on his part when the previous year’s policy came to an end.

This didn’t happen, so that when his motorbike was stolen some three months later he found that he was uninsured. Mr S is represented in bringing this complaint by his solicitor whom I’ll call “Ms K”.

background

I issued a provisional decision on this complaint on 15 April 2019, a copy of which is attached to, and forms part of, this decision.

Mr S said that he accepted my provisional decision. Devitt responded to say, in summary, that:

- it thought Mr S should have noticed the premium as high as £486.84 not being taken from his credit card account;
- it provided a recording of another phone call which it said indicated that Mr S was expecting further documentation once the policy renewed; and
- it said details of the claim and police report hadn’t been provided so normal investigations hadn’t taken place to validate, or not, the claim.

I allowed Devitt a further period of 21 days to provide me with any evidence that the claim would have been turned down if the policy had been in force. Devitt has now confirmed to us that the claim would have been accepted as valid if the policy had been in force.

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 remain of the view that it wasn’t unreasonable of Mr S not to notice the premium hadn’t been taken from his credit card account.

I’ve listened to the further phone recording Devitt sent us. Devitt’s operator was ready to take the premium there and then. But she made a mistake about one matter, which she acknowledged. So Mr S said he wanted to see the details of what he was covered for. He checked he could cancel within the cooling off period after he had read the detail.

Also the figures for the compulsory excess didn’t tally with what Mr S was expecting and had discussed previously. Devitt’s operator said she would discuss this with Devitt’s representative J and ring him the next day.

As Devitt has said, it tried to ring Mr S the next day, but couldn’t get hold of him. However the next thing that happened was that on 17 March 2018 Mr S received the letter from Devitt with the revised renewal notice which was all as he was expecting.

He relied on the wording of this letter that he didn't need to do anything and his insurance would then renew automatically on 26 March 2018. Nothing in this further phone call makes me think it was unreasonable for Mr S to do this.

So I still think Mr S acted reasonably in relying on the 17 March letter he received from Devitt to conclude that his policy had been renewed automatically and that no further action was required on his part.

I think it's fair and reasonable that Devitt pays Mr S:

- compensation of £10,898.16, being £11,885, less the policy excess of £500 and the premium of £486.84;
- interest on £10,898.16 from 29 April 2019 until settlement to compensate Mr S for the further delay while Devitt considered if there was any evidence that would have led to a claim being turned down; and
- £350 as compensation for the distress and inconvenience its error has caused him.

my final decision

My decision is that I uphold this complaint, and order Devitt Insurance Services Ltd to pay Mr S:

1. compensation of £10,898.16, being £11,885, less the policy excess of £500 and the premium of £486.84;
2. interest on £10,898.16 from 29 April 2019 until settlement for the reason I have mentioned above (1); and
3. compensation of £350 for the distress and inconvenience Devitt's error has caused Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 August 2019.

Lennox Towers
ombudsman

(1) If Devitt considers that it's required by HM Revenue and Customs to withhold income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue and Customs if appropriate.

COPY OF MY PROVISIONAL DECISION OF 15 APRIL 2019

complaint

Mr S complains that his insurance broker, Devitt Insurance Services Ltd (“Devitt”), misled him into believing that his motorbike insurance policy would automatically renew without any further action being needed on his part when the previous year’s policy came to an end.

This didn’t happen, so that when his motorbike was stolen some three months later he found that he was uninsured. Mr S is represented in bringing this complaint by his solicitor whom I’ll call “Ms K”.

background

Mr S had arranged insurance for his motorbikes through Devitt since 2013. In early March 2018 Mr S received a renewal notice from Devitt. In previous years his policy had renewed each year automatically, and Devitt held his credit card details to enable this to be done.

This year, the renewal notice said his premium would increase by £450 to over £1,300 for his two bikes. Mr S went online and found he could insure his bikes for less than this, including by insuring with Devitt online. So he rang Devitt and asked what it was prepared to do. He said he didn’t want to renew policy automatically at the quoted figure, which Devitt acknowledged.

On 14 March 2018, Mr S was phoned by one of Devitt’s representatives whom I’ll call “J”. He told Mr S that he could arrange renewal with the same underwriters as previously at a premium of £486.84. He asked if Mr S wanted to renew over the phone there and then.

Mr S wanted to check the terms offered and also look at alternatives. J said that was fine. He would put a quotation in the post. If Mr S wanted to accept it he should get back in touch. In the meantime he said the policy would not renew automatically.

On 17 March 2018, Mr S received a revised renewal notice from Devitt dated 14 March 2018. Because of the importance of this, I set it out in full below:

“Dear Mr S

Your Motorcycle Insurance is due for renewal on 26th March 2018...[in bold type]

Thank you for choosing xxx xxxx to Insure you over the past 12 months.

We are unable to offer renewal from your existing insurer. However, as we constantly check our panel of insurers to find our customers the best deals, we are pleased to tell you that we can offer you a renewal price of £486.84.

Have you checked that your Insurance cover still meets your needs? You may also consider shopping around to find the best deal and cover for you.

What you need to do now [in bold type]

- *NOTHING - Your policy will automatically renew on 26th March 2018 by collecting payment 7 working days prior to your renewal date*

Important: In the event that the payment declines your policy will not be automatically renewed, if your card details have changed, please contact us

- *If you do not want us to proceed, please call us on the above number as soon as possible*
- *Policy documents are enclosed for your reference - please check that all of the information is correct and ensure that you read your policy Terms and Conditions*

A full breakdown of this year's renewal price and last year's premium taking account of any changes you have made during the year can be found on the next page. If you have any questions about your renewal then please call our Customer Service Team on the above number and they will be happy to help you.

We look forward to Insuring you again - thank you for choosing xxx xxxx.

Yours sincerely"

Mr S took this letter at face value – as an offer to renew his insurance for the premium quoted that Devitt would proceed to process unless he now rang it to say he didn't want it. As he was now happy to proceed he did nothing more and assumed his insurance had been renewed.

Unfortunately, in early July 2018 one of Mr S's bikes was stolen and hasn't been recovered. When he rang Devitt to make a claim he found that the policy hadn't been renewed. His previous policy had lapsed on 26 March 2018, and so the theft wasn't covered by any policy.

Mr S complained to Devitt. He said its letter dated 14 March 2018 had led him to believe his policy would be automatically renewed. So he thought his claim should be covered.

Devitt didn't accept his complaint. It said the phone conversations on 14 March 2018 made it clear that the policy wouldn't auto renew, and Mr S needed to contact Devitt if he wanted to accept the amended quote. It said:

"Whilst our letter dated 14" March stated that we were going to automatically renew your policy this crossed with the discussion you had with us about your policy and request not to auto renew. Due to this payment was not collected, based on the requirement of you having to contact us."

Mr S complained to us. He asked for:

1. A declaration that the policy should have been auto-renewed;
2. A direction that Devitt place Mr S back into the position he would have been in if the policy had been incepted in accordance with the terms of the 14 March 2018 Renewal Notice; and
3. Compensation of £14,000 being the sum which would have been paid to Mr S under the terms of the policy of insurance (less any excess under the policy and the policy premium of £486.84).

our investigator's view

Our investigator didn't recommend that this complaint should be upheld for the following reasons:

- Devitt had followed what it had agreed with Mr S in cancelling autorenewal;
- she said in previous years at renewal Mr S had received two sets of papers. The first before renewal set out the quotation for renewal. The second, after renewal, confirmed the policy had been renewed and include the certificate of insurance. In 2018, Mr S only received the first set, not the second. Although the two sets of papers were similar, there were differences between them;

- Devitt sent an email to Mr S on 28 March 2018 notifying him that his policy had lapsed. Mr S said he hadn't received this but the investigator was satisfied that it had been sent; and
- Mr S's credit card statement showed that no payment had been taken by Devitt for the renewal premium in March 2018. The investigator said this would have been another indication that the insurance hadn't renewed.

So the investigator thought that in spite of sending the letter saying Mr S needed to do "nothing", Devitt hadn't made an error for the reasons she had set out.

Ms K responded to say, in summary, that:

- although Mr S agreed during the phone conversations on 14 March 2018 that the policy shouldn't be renewed automatically, this was superseded by the later renewal notice he received on 17 March 2018 offering renewal at a much lower premium and saying he need do nothing for renewal to proceed;
- the onus following the letter of 14 March 2018 was on Devitt to take the premium from Mr S's credit card account. Mr S wasn't obliged to check his account to ensure this had been done; and
- the email that Devitt claimed to have sent on 28 March 2018 was addressed to an old email address of Mr S. Mr S had previously advised Devitt of his new email address. Mr S had arranged for his old email address to be checked and there was no trace of the email being received, or indeed any emails from Devitt since 2014.

my provisional findings

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

In responding to Mr S's complaint Devitt said the 14 March 2018 renewal letter "crossed" with the discussion between Devitt and Mr S about not renewing the policy automatically. I don't think that's quite correct. I think the discussion took place on 14 March 2018. J said he would send the revised quotation to Mr S. Mr S received it on 17 March 2018.

In Mr S's mind this was a new offer. It said that to accept it he needed to do "nothing". The policy would now automatically renew with the new offer. So he took the letter at face value and thought the policy would now renew. I don't think this was an unreasonable decision for Mr S to take in the circumstances.

Mr S said he checks his credit card statement online, principally to see nothing is there that shouldn't be. I think it is harder to notice that a payment is missing than to see an additional payment that shouldn't be there. So I don't think any weight should be attached to the fact that Mr S didn't notice that some £400 hadn't been taken from his credit card account.

Devitt says it sent notice to Mr S by email that his policy had lapsed. I would have expected it to tell Mr S this in the circumstances. But having listened to the phone calls between Devitt and Mr S, it's clear that Devitt didn't send the email to the address Mr S gave it.

Instead it seems to have sent it to an old email address of Mr S. Mr S has since had this checked, and there's no trace of it having arrived. So I find that Devitt didn't notify Mr S that the policy hadn't renewed.

I agree that the second set of papers confirming the policy had been renewed didn't arrive. But all the information Mr S was expecting was in the first set. To a layman, the two sets of papers are very similar. So I can't say the absence of the second set should have put Mr S on enquiry.

I conclude that the letter Devitt sent Mr S, which he received on 17 March 2018, wrongly said his policy would renew automatically, and he needed to do “nothing”. It wasn’t unreasonable for Mr S to accept what the letter said and take no further action to renew his policy. And nothing happened after that which reasonably should have put him on enquiry about the policy.

I can’t at this stage require the policy to be set up. However I can require Devitt to compensate Mr S for the loss its actions in sending an incorrect letter have caused him. I’m not aware of any reason why the policy wouldn’t have covered Mr S had it been in place. So if the policy had been renewed, Mr S would have been able to claim under the policy for the loss of his bike. The amount of his claim would have been the market value of the bike on the date it was stolen.

Mr S assesses the value of the bike when it was stolen at £14,000. I asked the investigator to check the value of a bike of the same make, specification, age and mileage as Mr S’s bike with the trade valuation guides. These are based on likely retail transactions conducted for such bikes at the relevant date. In our experience, these provide the most reliable evidence of valuation.

One guide gave a value of £11,850, and another, a value of £11,920. Taking the average of the two figures, I assess the market value of Mr S’s bike when stolen at £11,885.

So I think it’s fair and reasonable that Devitt pays Mr S £11,885, less any policy excess and the premium of £486.84. I think it should pay him a further £350 as compensation for the distress and inconvenience its error has caused him.

my provisional decision

For the reasons I’ve explained, but subject to any further comments and evidence I receive from either Mr S or from Devitt by 29 April 2019, I intend to uphold this complaint. I intend to order Devitt Insurance Services Ltd to pay Mr S:

1. compensation of £11,885 (less any policy excess and the premium of £486.84) for misleading him into thinking on 17 March 2018 that his policy would now renew automatically; and
2. £350 as compensation for the distress and inconvenience its error has caused him.

Lennox Towers
ombudsman