

## **complaint**

Mr E has complained that Swinton Group Ltd cancelled his motorcycle policy without telling him.

## **background**

Mr E bought his policy through a broker, Swinton, and it needed evidence of his No Claims Bonus (NCB) within seven days. Mr E said he sent this to Swinton but it didn't receive it. So Swinton contacted Mr E's previous insurer on his behalf to get the information it hadn't received from Mr E, but his previous insurer told Swinton it couldn't find him on its records. Swinton called Mr E and left a voicemail message to discuss his NCB but he didn't call it back. It called him again and wrote to him too. As Mr E didn't provide evidence of his NCB, Swinton cancelled his policy.

Two months later Mr E called Swinton and said his scooter had been stolen. Swinton told him his policy was cancelled, but Mr E said it hadn't told him so he complained to Swinton.

Swinton said it had made a number of attempts to contact Mr E to get the NCB evidence it needed from him, and it had also tried to get evidence from his previous insurer. However, as Mr E didn't provide what it needed to continue his policy, it cancelled it. It said that Mr E didn't tell it that his previous insurer insured him under his middle name, rather than his first name, which was why his previous insurer had no record of him when Swinton asked them. So it didn't think it had done anything wrong.

Mr E didn't agree so he brought his complaint to us. The adjudicator who investigated his complaint recommended that it should be upheld. She was of the view that Swinton hadn't done enough to tell Mr E that his policy had been cancelled. She thought it should have also contacted him by email as it knew from some of its calls that he was abroad as it received an international dialling code when it rang him. She recommended that Swinton should deal with Mr E's claim for his stolen scooter as if his policy hadn't been cancelled, and pay him £150 compensation for the trouble and upset it had caused him.

Swinton didn't agree. It said that it was for Mr E to provide evidence of his NCB which he didn't. He didn't tell it that his previous insurer held his insurance under a different name, and it did tell him that his policy would be cancelled.

I issued my first provisional decision on 29 July 2015. I thought that Swinton had done enough to tell Mr E that his policy had been cancelled because;

- It had left a voicemail message with Mr E before he went abroad on 8 November as it couldn't get evidence from his previous insurer of his NCB.
- It wrote to his home address twice while he was abroad and although the address missed an "a" from it, I knew he had received his policy documents by post. So I didn't think the address difference affected the likelihood of receiving the subsequent letters.
- Swinton had called Mr E three times and received an international dialling tone and left messages so it had shown it had made contact with him while he was abroad.
- The seven day cancellation notice didn't expire until two days after Mr E had returned from abroad so I thought he still had the opportunity to prevent the cancellation.

- Mr E called Swinton twice after his scooter was stolen: the first time was to ask if his policy was still live, and the second time was later that day to report his scooter stolen which I thought was significant. I thought it more likely that Mr E realised that he hadn't followed up Swinton's request for NCB evidence as it had slipped his mind after returning from abroad.

Swinton didn't comment on my first provisional decision. Mr E asked for more time to provide his comments and in the meantime he asked Swinton to send him what it had sent to us. Mr E's then commented that:

- He thought Swinton should have actually made sure that it told him his policy had been cancelled. It should have known that he wasn't aware because he didn't return the motor insurance certificate and he needed to know that he wasn't insured so that he could reinsure elsewhere. The consequences of driving unknowingly whilst not being insured were very serious.
- When he spoke to Swinton in October before he went abroad it was agreed that Swinton would get evidence of his NCB from his previous insurer as he had already sent it to it but it hadn't received it from him. As he didn't hear anything further, he assumed there was nothing further for him to do.
- Swinton's notes say that it left a voicemail message for him on 8 November but he didn't receive it in Sri Lanka.
- Swinton's notes say it called him three more times whilst in Sri Lanka but doesn't say it left voicemail messages. So he doesn't think Swinton can rely on this as enough to notify him of the possible cancellation.
- He didn't receive its seven day cancellation letter and he doesn't think it sent the letter to him.
- He doesn't see anything that shows it sent him a letter on 13 November and it still hasn't sent him a copy of the letter despite requests.
- When he spoke to Swinton about the cancellation, it told him it had written to him three times but this isn't true.
- He doesn't think it's fair that Swinton didn't follow up his NCB evidence from 17 October until 8 November, and then cancelled his policy by 28 November.
- The reason why he made two calls after his scooter was stolen was because after he spoke to Swinton he immediately called his insurer who gave him a claim reference number and told him his policy was in place. He then called Swinton back where Swinton told him again that his policy had been cancelled. The insurer confirmed this was the case a week later.

I then issued a second provisional decision on 4 December 2015. I thought that Mr E's further information was persuasive and I thought that Swinton should have written to Mr E when it actually cancelled his policy. Because it didn't, I thought that Swinton should now put itself in the shoes of the insurer and deal with Mr E's claim.

Swinton didn't agree. It asked if we had validated Mr E's identity and if we had checked with his previous insurer if his policy would have been valid with them if they knew he had bought their policy using a false name. It believes that his previous insurer would have cancelled his policy as if it never existed if it knew it had the wrong name for Mr E and this would have meant that his insurer with Swinton wouldn't have considered his claim anyway.

It said that it doesn't think a final letter to Mr E confirming his policy was cancelled would have made any difference. It has questioned Mr E's statement that he contacted the insurer after Swinton told him his policy was cancelled and his insurer told him his policy was still in place. It wants us to investigate this further.

So the matter has been passed back to me to decide.

### **my findings**

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

When Mr E called Swinton in January after his scooter was stolen, its notes say the following;

*26/01/15 11.52. client called reg policy to see if still live explained cancelled in jan he said ok"*

*26/01/15 13:55 client called to say that his bike was stolen 24 jan 15 – explained that his policy was cancelled as he didn't provide PONCB to us..."*

I think that Mr E's explanation as to why these calls happened in the way they did is reasonable and I think it was less likely that he was already aware that his policy had been cancelled.

Swinton said that it couldn't get evidence from Mr E's previous insurer of his NCB because he used his middle name as his first name. I don't think Swinton are at fault for its attempts to get this evidence when it didn't have any from Mr E. I know Mr E said he sent it, but Swinton didn't have it and still needed it. Mr E has provided us with proof of his identity along with evidence from his previous insurer of his NCB history.

Mr E said he used his middle name when he bought his policy with his previous insurer as he is known by that name. Swinton has asked if there would be any other reason, other than for fraudulent purposes, that Mr E would use a different name to buy his policy. However Swinton hasn't given enough information to show that Mr E's explanation isn't more likely.

Mr E told Swinton on 3 February that he was abroad from 10 November and returned on 26 November. He then suggested that he was abroad when Swinton called him on 8 November and left a voicemail message. Swinton made no reference to an international dialling tone for this call log, but it did for later calls, so I think Swinton successfully left Mr E a voicemail message before he left the UK.

Mr E's policy said that it or the authorised agent (Swinton in this case) would write to him giving him seven days notice of cancellation, which it did. Our approach to cancellation is that we expect to see that a broker or insurer immediately writes to a policyholder to confirm that the policy has in fact been cancelled and is no longer in force. Having reviewed Swinton's notes, it did tell Mr E that it had written to him three times, but it only recorded that it wrote to him twice: on 13 November to tell him it didn't have his NCB evidence, and on 21 November giving him seven days notice that his policy would be cancelled.

Swinton said it can't reproduce its letters but it has been able to provide a copy of the seven day cancellation letter dated 21 November. But it hasn't provided a copy of its letter dated 13 November although its notes say "*sent NCB not as confirmed letter.*"

Mr E said Swinton told him it wrote to him on 13, 21 and 28 November but it didn't write to Mr E on 28 November to tell him his policy had actually been cancelled, nor did it suggest it did when it replied to his complaint.

I'm satisfied that, on balance, Swinton wrote to Mr E on 13 and 21 November and I don't hold it responsible for the fact that these letters didn't reach Mr E. As Mr E received his policy with the address being slightly incorrect, I think he should have contacted Swinton then to alert them to any error in the address, but he didn't.

However I agree with Mr E that Swinton's attempts to contact him by phone on 13, 20 and 21 November when he was abroad wasn't enough to alert him to any problem as there's nothing to show that a voicemail message was left on any of these occasions.

In this case, because of the serious implications of being uninsured and Swinton knew that Mr E was abroad when it tried to speak to him, I think it should have done more to alert him to the fact that he was no longer insured. This would have given Mr E the opportunity to arrange alternative cover.

Swinton doesn't think sending another letter would have made any difference to the outcome as Mr E said he didn't receive any letters from Swinton or the voicemail message on 8 November. However if Swinton had written to Mr E on 28 November to tell him his policy had been cancelled, even if he hadn't received that letter too, I think it would have done enough to tell him about the cancellation. As it didn't, I don't think it has been fair and reasonable to Mr E as it failed to tell him in a timely manner that the cancellation had taken place.

I therefore think that Swinton should put things right by putting itself in the shoes of the insurer and deal with Mr E's claim for his stolen scooter. It should also compensate Mr E for the trouble and upset it has caused him.

### **my final decision**

For the reasons I've set out above, my final decision that I uphold this complaint and I require Swinton Group Ltd to do the following:

- deal with Mr E's claim for the theft of his scooter by paying the market value of it adding 8% simple interest per year from the date of the theft to the date it pays him.
- Pay Mr E £150 compensation for the trouble and upset it caused him.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr E to accept or reject my decision before 22 February 2016.

Geraldine Newbold  
**ombudsman**