

complaint

Mr G is complaining that Highway Insurance Company Limited (Highway) avoided his motorcycle insurance policy.

Mr G is represented by another party on this complaint. But for the ease of reference, I shall refer to any representations his representative has made as being made by Mr G.

background

In March 2015 Mr G took out a motorcycle insurance policy through a comparison website. Highway later reviewed Mr G's claims history and it found one undisclosed claim and one claim that it had recorded as a 'non-fault' claim, when in fact it was a fault claim. Highway referred this matter to the business who sold the policy who said that Mr G had disclosed the non-fault claim as a fault claim, but a mistake had happened in referring the information to Highway.

Highway was satisfied that Mr G hadn't given incorrect information about one of the claims, but it said he should have told it about the other claim. Mr G said that accident was in his partner's car. And he said he wasn't aware he had to disclose accidents where he was driving a car.

Highway maintained that Mr G should have disclosed the second claim. And it said it wouldn't have insured him had it known about this claim. So it avoided his insurance policy back to the beginning and refunded the premium Mr G paid for the policy.

Mr G didn't agree with Highway's decision. He didn't think the question was asked clearly enough for him to know that he had to disclose claims made on a car insurance policy. He also referred to guidelines set out by the Association of British Insurers (ABI) which recommended that insurers tell the applicants to include claims "*involving any motor vehicle (including car, motorcycle or van)*" when asking about their claims history.

Highway didn't think it had acted unfairly, so Mr G asked this service to step in.

Our adjudicator didn't uphold the complaint. She said that the ABI's statement was merely guidelines and she said Mr G had been asked to disclose *any* accident claim or claim. She thought the question was sufficiently clear enough for Mr G to have known that he should have disclosed claims involving a car as well as on a motorbike.

Mr G didn't agree and said that when asked to disclose his claims history, the comparison website gave the following options:

- Single Vehicle - Rider Hit Third Party
- Single Vehicle - Rider Hit By Third Party
- Multiple Vehicle - Rider Hit Third Party
- Multiple Vehicle - Rider Hit By Third Party
- Rider Hit By Uninsured Driver

He believes that the wording of these, guided him towards thinking he only needed to disclose accidents or claims that have occurred whilst riding a motorcycle.

Since then, Highway has also said that, when asked to disclose the claims history, the comparison website initially asked *“did this claim occur on a motorcycle insurance policy”*. So it said that Mr G should have understood that he needed to disclose claims on his car insurance policy from this.

Mr G still didn't agree with the adjudicator and asked for an ombudsman to review the complaint.

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've decided to not uphold this complaint. And I'll now explain why.

Under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) Mr G had a duty to take reasonable care not to make a misrepresentation when applying for his insurance policy. And, for Highway to take any action at all, it needs to show Mr G didn't do this and that he made what's described as a qualifying misrepresentation.

CIDRA sets out a number of things that need to be considered when deciding whether a consumer failed to take reasonable care. One of these considerations is the questions the consumer was asked. Mr G took out the insurance policy online which initially asked:

“Please tell us about any accidents, claims or losses made by you or against you, irrespective of fault within the last five years”.

Mr G says that he didn't realise that he had to disclose accidents or claims relating to driving a car and he only thought he had to disclose those relating to riding his motorcycle. He's also referred to guidelines set by the Association of British Insurers which says that insurance applicants don't always understand that what claims, accidents or incidents they need to disclose – especially when a previous incident relates to a different vehicle. And it says that insurers/brokers should make it clear that applicants need to disclose incidents related to *any motor vehicle* – i.e. including car, motorcycle and van. I don't disagree with this statement. And had Mr G not had to disclose a claim he'd made on a previous motorcycle policy I'd be inclined to agree with him.

However I'm conscious that Mr G did disclose one claim from the year for an accident while riding his motorbike. So I've looked at what Mr G was asked once he disclosed the claim. The website then took him to another page and Mr G was asked *“Did this claim occur on a motorcycle insurance policy?”* Following this the website asked him to *“Please enter the details of any accidents or claims within the last 5 years, on any vehicle and regardless of blame.”*

Mr G says that he doesn't remember being asked this and he's queried whether this was actually the question set, given that Highway couldn't initially provide copies of what he was asked. He also says that this is what the website asks now, so he thinks that Highway is relying on the questions asked currently, rather than what it was asking applicants in March 2015 when he applied for the policy. But I've discussed this extensively with Highway and I understand that only one question has changed on the website application. And that's to ask *“Did this claim occur on **your** motorcycle insurance policy?”* Whereas it previously asked if it occurred on *“**a** motorcycle insurance policy.”*

So I think, on balance, I think it's *most* likely that Mr G was asked to disclose any accidents or claims he'd had in the last five years on any vehicle. And based on this, he should have disclosed the claim he had while driving his partner's car.

I don't think Mr G did this deliberately and I think it was a simple mistake. But CIDRA would consider this to be careless misrepresentation. CIDRA says that Highway could avoid Mr G's insurance policy in these circumstances if it could show that it wouldn't have insured Mr G had he disclosed the second claim. Highway has provided its underwriting criteria which sets out what it's willing and not willing to cover. And, based on this, I'm satisfied that it wouldn't have insured Mr G had it known about the second claim.

Mr G has also provided data from the comparison website which he says shows that he did actually disclose the second claim. But this was dated one month after he took out the policy and after Highway had avoided the insurance policy. Highway has provided us with a copy of the information he actually gave when he applied for the policy in question. And this shows that he only disclosed one claim.

So, given what I've said above, I can't say that Highway acted unfairly in avoiding Mr G's insurance policy for misrepresentation.

my final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 1 March 2019.

Guy Mitchell
ombudsman