

complaint

Mr H complains Southern Rock Insurance Company Limited didn't refund his premium when he cancelled his policy after it decided to reject his motor insurance claim.

background

Mr H had his motorcycle stolen and so he made a claim under his insurance policy.

Southern Rock investigated Mr H's claim and found that the bike was stolen from outside his place of work. Mr H told Southern Rock that he had last used his bike to travel to work on the day it was stolen and that he regularly used it to commute to work. He also confirmed he had bought it for commuting.

Mr H's policy covered him to ride for social, domestic and pleasure purposes only. It didn't cover him for commuting. When Southern Rock found out Mr H regularly used his bike to commute to work, it decided not to pay out on the claim. Southern Rock explained that it had asked a clear question and that Mr H, at best, was reckless not to disclose he planned to use his bike to commute. Unhappy with this, Mr H cancelled his policy and asked for a refund, which also was refused. So Mr H brought his complaint to us.

One of our investigators looked into the complaint and thought that under the policy terms, Southern Rock was within its rights to reject the claim and retain the premium.

Mr H disagreed with the investigator's opinion. He explained that he made a genuine mistake and he doesn't think using his bike to commute has anything to do with its theft. So he thought Southern Rock should give him back his premium.

I issued my first provisional decision on this complaint in October 2017. I understood Southern Rock had 'avoided' his policy (i.e. treated it as if it never existed). This was because Southern Rock's final response letter, setting out it how looked into Mr H's complaint, led me to believe the approach it followed was the same as how we would look at complaints where an insurer says a consumer did not disclose everything they should have when taking out an insurance policy. Southern Rock responded to say that was not the case.

Southern Rock clarified that it didn't avoid Mr H's policy but decided not to pay his claim and it was Mr H who requested the cancellation of the policy. It added that Southern Rock hadn't rejected the claim because of an undisclosed or misrepresented fact, but because the level of cover Mr H selected didn't include Mr H's commute to work, from where his bike was stolen. So I issued a second provisional decision on the complaint in November 2017.

I needed to consider whether the theft of Mr H's bike was connected to how he was using it before it was stolen, whether the policy covered that purpose, and whether he was due any refund of his premium.

Mr H used his bike on the day it was stolen to get to work and then parked it outside of his place of work. Mr H applied for his insurance online and the proposal form that followed this process showed he wanted to use his bike social domestic and pleasure purposes, *excluding* commuting. Under the terms of the policy, Mr H wouldn't be covered under any section of the policy (including theft) if he used his bike to commute. As Mr H volunteered that he regularly used his bike to get to work and as his bike was parked outside his place of

work, I was satisfied Southern Rock acted within the terms of policy and it didn't need to pay out on the claim.

I also considered whether Mr H is owed a refund of the policy premium for the cover he didn't use after he cancelled the policy. Mr H wasn't due a refund because the theft of his bike led him to make a claim, even though that claim hadn't paid out. As Southern Rock hadn't avoided Mr H's policy, it also meant he was covered by the insurance policy up until the time his bike was stolen. So I thought it was fair for Southern Rock to keep the policy premium given it met the cost of setting up the policy and investigating Mr H's claim.

Overall, whilst I didn't doubt Mr H intended to have insurance which covered him to ride to and from his place of work, his policy didn't cover him for this. I didn't think Southern Rock had acted unfairly in refusing the claim because Mr H rode to and parked outside where he worked when his bike was stolen. So I no longer intended to uphold the complaint.

I invited both parties to let me have anything they thought was relevant in response. Both Mr H and Southern Rock confirmed receiving my provisional decisions. Southern Rock didn't provide anything further for me to think about. Mr H asked me to explain why The Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA") doesn't apply given that I had accepted he had been careless and didn't deliberately mislead Southern Rock about how intended to use his bike. He also thought the terms for refunds under the policy were unfair.

my findings

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

Mr H has questioned whether the remedies set out under CIDRA should apply. CIDRA deals with the duty to take reasonable care not to make a misrepresentation when answering an insurer's questions about facts relevant to the proposed risk. Southern Rock didn't avoid the policy or refuse to allow the proposed risk to continue on the same basis as it was underwritten at the outset. That included the level of cover Mr H selected, which only allowed him to ride for social domestic and pleasure purposes, but not commuting. Southern Rock didn't pay out on Mr H's claim because he'd been using his bike for commuting (which isn't covered under the policy) and not because he misrepresented facts relevant to the proposed risk. So, as there's not been a 'qualifying misrepresentation' and as Southern Rock hasn't avoided Mr H's policy, I'm satisfied the remedies set out under CIDRA don't apply in these circumstances.

Finally, I've noted what Mr H has said about the fairness of the terms for refunds under the policy. Although I recognise Mr H's frustration I don't think I can fairly or reasonably require Southern Rock to give Mr H a refund for the reasons I explained in my second provisional decision.

Overall, I don't see any compelling reason to change the proposed outcome in this case.

my final decision

For the reasons given here, and in my second provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 January 2018.

Stefan Riedel
ombudsman