

## **complaint**

Mr M complains that Ageas Insurance Limited voided two of his motor insurance policies and cancelled a third when he tried to claim for theft of a motorbike.

## **background**

Mr M had two motorbikes and a car, all of which he insured via policies underwritten by Ageas. As the underwriter, Ageas is responsible for dealing with claims and so I'll refer to Ageas in the decision, including when talking about actions taken by other companies acting on its behalf.

Unfortunately, one of his motorbikes was stolen and so Mr M made a claim for theft. Ageas investigated the claim. In doing so, it found that Mr M had previously had two claims for theft of motorbikes with a different insurer – and the other insurer had voided his policy following the second claim.

Ageas said that when he took out the policy, Mr M had told it about one of the thefts – but not the other theft, and not the voidance of the other policy. It said that had it known of the voidance it would never have offered cover, so it too voided Mr M's policy. This meant his insurance was cancelled as if it never existed, and so he wasn't covered for the latest theft.

Ageas then reviewed the other policies. It said that Mr M hadn't declared the voidance on the car policy either, and the same applied – so it voided that policy too. And it gave notice of cancellation of the other bike policy too.

Mr M complained. He said he hadn't misled Ageas when taking out the policies. It hadn't given him copies of the call recordings so he could verify what was said – and he disputed Ageas' version of the conversations. He said it hadn't written to him in good time, and so he'd unknowingly been driving uninsured and hadn't had the chance to contest Ageas' decisions. He said as a result he'd incurred considerable financial losses and couldn't find alternative insurance at an affordable price.

Our investigator didn't think Ageas had acted unfairly, so Mr M asked for an ombudsman to look at his 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 also considered relevant law, rules and regulations and industry good practice. The relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act. It's as a result of this Act that Ageas voided the car and one of the bike policies.

In brief, the Act says a consumer taking out insurance has a duty to take reasonable care not to mislead the insurer. If reasonable care isn't taken and a misrepresentation is made, the insurer should assess whether it's a qualifying misrepresentation – that is, one that would have affected the basis on which the policy was issued. If a qualifying misrepresentation is reckless, the insurer can cancel the policy from the start. If it was careless but not reckless, the insurer can cancel the policy if it can show it would never have issued it if it had known the truth – or can vary the policy to what it would have been. And if a

claim's made, it can reduce the value of the claim proportionate to the underpayment of premiums resulting from the misrepresentation.

In deciding whether there was a misrepresentation, and whether if so reasonable care was or was not taken, it's important to consider the specific questions Mr M was asked.

Dealing with the stolen bike policy first, Mr M was asked, in the call where the policy was set up in June 2016:

- *Have you had any accidents, claims or losses in the last three years?*
- *Accidents or claims? Yes I have*
- *What was the date?*
- *The date of one of the claims was the 27th of March*

Mr M and the adviser then discussed the details of a previous theft claim. The call goes on

- *Have you had any other accidents claims or losses in the last three years?*
- *No*

Mr M was also asked:

- *Have you ever been refused motor insurance or had a policy cancelled or any terms imposed?*
- *No*

Mr M therefore did disclose one of the two previous claims Ageas found on the insurance database. But he didn't disclose the other, and he didn't disclose that his previous insurer had voided his policy. The insurer voided the policy in April 2016 following a claim Mr M made in 2015.

Mr M has said he didn't disclose it because the previous voidance was "under investigation" – and indeed, he was in the process of complaining to us about it at the time, though we later did not uphold his complaint.

I think the questions Mr M was asked were clear. He only declared one previous claim, not two. And he didn't declare that he'd previously had a policy cancelled. He clearly knew about the cancellation, as he was complaining to us about it at the time. He could have explained the situation to Ageas, and explained the cancellation was in dispute. But he didn't do that. He said it hadn't happened. Rightly or not, the fact was that at the time Mr M knew he'd had a cancelled policy – and didn't declare it. I think Mr M was therefore careless in his answers to the question, and failed to take reasonable care not to make a misrepresentation.

Ageas has shown that if it had known of the previous voidance, it wouldn't have offered a policy. That makes it a qualifying misrepresentation, and so Ageas is entitled to void this policy. It's done that, refunding the premiums, and explained that means it can't consider the new theft claim. It won't consider the claim because voiding the policy means it is as if it never existed, so Mr M wasn't covered at the time of the theft. In all the circumstances, I don't think that was unfair.

In respect of the car policy, the key call was a renewal not a new policy – since the other insurer's voidance was after the policy was taken out but before the latest renewal – and so

Mr M was asked slightly different questions. He was sent a renewal form, and then had a renewal call with an adviser. During the call the adviser confirmed the renewal form was correct, and then asked:

- *Have there been any changes to your information that are not shown on the renewal notice? For example any accidents, claims, convictions or vehicle modifications?*
- *No*

The renewal notice doesn't record any claims. And it asked "*please advise us if you or any other named driver on the policy have experienced any of the following since your last renewal: Any accident or loss (whether a claim was made or not)*". Mr M didn't disclose any claims.

Mr M had in fact had two claims, one in October 2015 and one in March 2016, recorded on the central claims database. The October 2015 one was the previous insurer's avoidance. Mr M didn't disclose these claims when renewing the car policy, most recently in November 2016. I think that amounts to a careless misrepresentation.

If Ageas had known of these claims, and the avoidance, when renewing the policy in November 2016 it wouldn't have gone ahead. So I think it was fair for it to void this policy too.

The final bike policy was taken out in February 2016. When he took the policy out, Mr M was sent a statement of fact, described as "*a record of statements given verbally, by you. If any of the details appear to be incorrect or incomplete please contact us immediately. Failure to notify us of any inaccuracies could invalidate your insurance*". The statement said:

- *Have you, or any person who might drive the vehicle, been involved in any accidents, claims, damage or loss including theft or attempted theft, whether a claim was made or not, regardless of blame, with any motor vehicle (including motorcycles) either owned or driven within the last five years?*
  - The answer was recorded as "none disclosed".
- *Ever been refused or had insurance cancelled?*
  - *No*

The previous insurer had not confirmed avoidance of his policy by February 2016. But it was only a few months since he had made the claim which led to the avoidance, in late 2015. When he took this policy out, Mr M could not have known that the other policy would be voided. But he knew he'd recently made – and had had declined – a claim. And he didn't disclose that claim when he took this policy out.

I've not seen the questions Mr M was asked when he took the policy out. But the statement is a clear record of the answers he gave, and Mr M was warned of the importance of correcting anything that was wrong or incomplete. The previous avoidance wasn't known at this time – but the two previous claims were.

The terms and conditions of this policy allow it to be cancelled with seven days' notice. No reason for cancellation needs to be given. So contractually Ageas was entitled to cancel it – and in the circumstances I don't think that was an unfair thing to do.

So, across the three policies, Ageas:

- Voided the stolen bike policy, since Mr M would have known of both the claim and the voidance when he took the policy out in June 2016 but didn't declare them;
- Voided the car insurance from the November 2016 renewal, since Mr M was asked about and didn't declare two claims from that renewal date;
- Cancelled the other bike insurance policy in January 2017, once it learned of the voidance which had happened since this policy was taken out, in relation to a claim not disclosed at inception.

In each case, it refunded the premiums. Taking into account the relevant law and all the circumstances, I don't think Ageas acted unfairly. It's shown that Mr M misrepresented the true position on taking out or renewing all three policies. Had it known the correct position it wouldn't have accepted the policies or wouldn't have continued with them. So it was entitled to take the action it did in voiding the two policies where Mr M didn't declare the claims or voidance, and cancelling the third policy which was taken out before the voidance once it learned of it.

Voiding a policy means it as if it had never existed – and so I don't think it was unfair for Ageas to refuse to deal with the stolen bike claim, because that wasn't something, following the voidance, that Mr M was insured for.

### **my final decision**

For the reasons I've given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 January 2019.

Simon Pugh  
**ombudsman**