

The complaint

Mr D has complained about his car sport (on track) insurer Hiscox Insurance Company Limited because it avoided a policy on which he was a named driver, thereby declining a claim for an accident he was involved in during a race.

Mr D is represented by solicitors. But for ease of reference, I'll mainly only refer to Mr D.

What happened

Mr D was due to take part, over a weekend, in a car race. He had his own car insured for use for that purpose. But on the Friday, during test runs, he crashed his car, meaning it wouldn't be able to be used in the racing over the weekend. Mr D came to an arrangement for a car to be loaned to him. The team Mr D was racing for/with organised insurance to cover Mr D in the loaned car.

A representative of the racing team emailed a car sport insurance broker. The broker was given a few important details – such as the make/model of the loaned car. The broker was also told that Mr D had “no previous accident history”. A policy was provided, which Mr D later paid the team for and on which he was a named driver.

The next day, during the first race, Mr D was involved in a crash. A claim was made on the policy for repair costs – these have since been confirmed as in the region of £80,000. Mr D has settled, or has been looking to settle, with the car's owners to avoid further costs occurring. Hiscox, particularly noting the accident on the day before the race, said that when the policy was arranged, a fair presentation of the risk had not been made to it because it had not been told about the very recent accident. It said that if it had known about that, bearing in mind the time of year, it wouldn't have offered cover. It said it thought the detail of the accident had likely been deliberately withheld. Therefore, as well as avoiding the policy, thereby declining the claim, it wouldn't refund any premium. Mr D complained to the Financial Ombudsman Service.

Our Investigator did not uphold the complaint. She felt Hiscox had acted fairly and reasonably. Mr D objected, restating his view that the prior accident can't have been material to Hiscox because it regularly provides cover for car racing, of which accident are a common feature. He also said Hiscox had not shown any evidence to support its argument that the incorrect detail had been deliberately provided. He added there was no reason for the policyholder to have acted to deliberately withhold the accident detail.

The complaint was referred for an Ombudsman's decision.

What I've decided – and why

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

Having done so I find my view on this complaint is the same as that expressed by our Investigator. In short, I think Hiscox acted fairly and reasonably. I've set out my reasons for

this below. Whilst I haven't referenced every argument made by the parties, I've taken everything which has been said into account. My findings will focus on those points I find are material to the outcome.

Mr D did not arrange this insurance. But a representative of the team he was racing for/with did so. He was named as a driver on the policy and also covered the cost of the premium. The policy was arranged in order that he could race. Seemingly, from the familiarity suggested by the email, the team representative was able to quickly and informally contact the broker – with the need for cover being somewhat urgent given the race the following day. I think it's fair to say the policy was taken out for Mr D's benefit and that the team representative, in arranging the cover, was doing so for Mr D. So any error or deliberate act by that representative I think reasonably is an error or act of Mr D.

As Mr D was racing for/with the team, I think the team would have wanted to ensure his participation. Considering the content of the email it seems this was the first and only email requesting cover for Mr D – there wasn't an initial enquiry from the team asking if it would be possible to get a quote and enquiring as to what detail would be required to do so. Rather, the team seemed to know without being prompted what was needed to ensure a policy could be quickly put in place. Including, importantly, that the broker would want to be told about Mr D's accident history.

I note Mr D has argued that the accident history likely wasn't material to Hiscox. But the fact that detail about the history was volunteered does satisfy me that the team knew this was an important factor. I'm also not convinced that, just because Hiscox operates in an arena where accidents are expected, that means that the accident history of a named driver wouldn't be important to it. I think, logically, the converse is actually true – that it would take much more notice of accidents and what circumstances might occur which would increase its exposure to risk. I bear in mind detail I've seen from Hiscox – which can't be shared with Mr D because it's confidential – which shows that Hiscox is not prepared to accept risks which involve a previous accident history and cover requested for single events which will potentially be subject to bad weather. I think that is exactly the scenario it would have been faced with if it had been told about Mr D's accident earlier that day, with cover needed for a race the following day, in late autumn/early winter.

I'm mindful that Hiscox, whilst being of the view that this was likely a deliberate misrepresentation to it of the risk, hasn't provided evidence to support that. But, in this case, I think the circumstances sufficiently show (as Hiscox has argued) that a deliberate act most likely occurred. The team must have known, I think, about the crash that day. I also think, they needed/wanted Mr D to race the following day, and likely also knew that an accident history would prevent insurance being provided. I, therefore, further think that it's most likely that cover, and Mr D's participation in the race, was then assured by not advising the broker of that crucial detail. It makes no sense to me to think that the team knew that the accident history had to be given (and detail in this respect, as I said, was given unprompted) and that they offered that having missed/overlooked/forgotten about the accident which had occurred just a few hours before.

So Hiscox has satisfied me that a fair presentation of the risk was not made to it when the policy naming Mr D as a driver was arranged. It's also satisfied me that if fair presentation had been made – that the correct accident history had been disclosed – it would not have offered cover. It's further satisfied me that the unfair presentation of risk was likely made deliberately. Given all of that, it follows that I find Hiscox' decision to avoid the policy, thereby declining the claim whilst retaining the policy premium, is fair and reasonable.

My final decision

I don't uphold the complaint. I don't make any award against Hiscox Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 January 2024.

Fiona Robinson
Ombudsman