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'I never said that!' - the importance of telephone recordings

Both firms and their customers are making increasing use of the telephone for a wide range of transactions. And subsequent disputes about exactly who said what feature more and more frequently in our caseload. When this happens, it is obviously far easier to resolve matters if the firm has tape-recorded calls, or followed them up with a clear and agreed written statement of what was discussed. We can otherwise be left to try and resolve the matter by assessing conflicting versions of critical conversations, taking account of the wider circumstances of the case and our knowledge of insurers' procedures.

Recordings are clearly important where a telephone conversation takes the place of a completed and agreed proposal form. But calls relating to claims also give rise to disputes. Did the customer report the theft of this item or not? Did the insurer agree to that repair proceeding without delay? Did the firm inform the customer that the required medical treatment was not covered?

Some time ago, the Insurance Ombudsman Bureau stressed the importance of firms recording critical telephone transactions, or of their being able to demonstrate their version of events in some other convincing way. We are pleased to note that a number of firms do now appear, as a matter of course, to make and retain good quality recordings of critical calls. We regard this as good industry practice and we expect to be able to resolve disputes about what was or was not said by referring to these recordings. If recordings are not available, we will look to the firm to set out why on the balance of probabilities we should accept its version of events rather than the customer's.

Where we cannot determine with any confidence what took place, we may decide to give the customer the benefit of any doubt and/or to conclude that there has been a genuine misunderstanding. In such instances, we will try to place the parties in the position we believe they would have been in had the misunderstanding not occurred. In cases of alleged non-disclosure, for example, where we think that a request for information (or the response to it) was uncertain, we may review the claim as though the customer had given the correct information.

The following case studies illustrate some of the benefits of recording calls

and show our approach where there is no clear record of what took place.

case studies – the importance of telephone recordings

■ 18/01

household – non-disclosure – proposal – proof of non-disclosure.

Mr B's lender sent him a leaflet advertising premium discounts for new household buildings and contents insurance policies. He applied for a policy by telephone and it was issued on 1 March 2000.

In November the following year, after settling a claim from Mr B for water damage, the insurer searched the industry database. It discovered that – between February 1995 and August 1999 – Mr B had made eight claims of which it had no record. The insurer had been aware of only one previous claim and said it would never have agreed to insure him if it had known he had made so many previous claims. It cancelled his policy and offered to pay him the difference between the premiums he had paid to date and the amount it had paid to settle his water damage claim.

Mr B said that when he applied for the policy, the member of staff he had spoken to had said she required details only of his most recent claim. However, the lender said it had a note made by another staff member that, in a later conversation, Mr B had denied making any previous claims. He had also refused to provide confirmation from his last insurer about his claims history.

complaint upheld

There was no recording of the telephone conversation when Mr B applied for the policy. So the insurer could not prove that it had asked him clear questions about matters it considered important for assessing his application. There was nothing to support its argument that he had failed to disclose all the information it considered material and it could not prove that Mr B misrepresented the details of his claims history.

We took account of the lender's note of Mr B's subsequent telephone conversation. However, we did not agree that this was sufficient to demonstrate *either* that the sales staff had asked him clear questions about relevant matters or that he had given misleading information. We decided the insurer was not entitled to cancel the insurance or to recover its payment of the water damage claim.

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■ 18/02

travel – exclusion for pre-existing medical conditions – exception for conditions agreed by insurer – whether insurer agreed to

cover policyholder's heart condition.

Mr and Mrs W's son invited them to join a family holiday in Las Vegas and he paid for their trip and insurance. The travel agent said that Mr and Mrs W should call the insurance company's medical advice line to discuss their health. Mrs W did this and told the adviser that her husband had suffered from diabetes and angina for some years.

While in Las Vegas, Mr W had a heart attack and was admitted to hospital. The family notified the insurer's emergency medical service. After some confusion about the policy cover, the emergency service told the hospital that there was no cover for Mr W's heart condition and that it would not meet his expenses.

Mrs W said she had been told that the insurer would cover both of Mr W's conditions. The insurer said it had agreed to cover the diabetes without charge. But it had said it would cover the heart condition only if the couple paid a further premium of £33.60 and agreed an excess of £350. As they had not paid, the heart condition was excluded. The insurer said that the policy terms excluded Mr W's heart condition from cover, so it had not needed to send the couple written confirmation of this.

The insurer paid for Mr W to return to the UK, but it rejected the claim for his hospital fees of about £250,000. Mr W died shortly after his return home.

Mrs W maintained that her claim was valid and said she would have made the additional payment if she had been asked to do so.

complaint upheld

We generally settle complaints based on the paperwork and other evidence that the firm and the customer provide, rather than at a hearing, where both sides to the dispute meet face to face. However, we decided that a hearing would be helpful in this case, so that both parties could put forward their versions of events.

The insurer based its position on a computer note made at the time of Mrs W's call. This said 'not interested in cover for heart'. Mrs W was firm in her conviction that she had not been asked to pay an additional premium to cover her husband's heart condition.

We found Mrs W's account generally convincing, particularly since she had taken the trouble to telephone the advice line before the holiday. The insurer had an obligation to check that Mrs W understood the implications of not paying the additional premium it said it had quoted her. She might not have agreed to pay, even if she had understood clearly that this meant she could not make any claim arising from her husband's heart condition. However, we decided this was unlikely. It

seemed possible that there had been an innocent misunderstanding.

It was unfortunate that the insurer did not record telephone conversations with its policyholders and had not sent the couple any written confirmation of what had been agreed. It left the position regarding Mr W's heart condition open to misunderstanding. It also meant that – had there been any dispute about the insurer's agreeing to cover the diabetes without additional charge, and amending the terms of the policy – there was no evidence other than the insurer's computer record.

We required the insurer to put Mrs W back in the position she would have been in if:

- there had been no misunderstanding;
- and*
- she had paid the additional amount required to cover her husband's heart condition.

We awarded her £100,000 – the maximum amount we can order a firm to pay. However, we accepted that if the firm met the balance of the claim, it could deduct the amount she would have paid for the additional premium and the £350 excess.

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■ 18/03

motor – non-disclosure – innocent non-disclosure – whether insurer treated non-disclosure as serious.

Mr C arranged motor insurance over the telephone for himself and for his wife as a 'named driver'. The insurer sent him a printed statement of the questions and answers on which it had based its decision to offer him insurance. It asked him to check the statement and let it know if anything needed correcting. One of the answers confirmed that neither he nor his wife had any motoring convictions in the past five years.

Some time later, after Mr C had put in a claim for damage done to the car during an attempted theft, the insurer discovered that both Mr and Mrs C had convictions for speeding. So it told Mr C it was treating the policy as void and would not deal with the claim.

Mr C insisted that he had disclosed his conviction when he telephoned for a quotation. But he admitted that he had not checked the statement carefully before he signed it. The insurer conceded that Mrs C's conviction was not important. However, it said it would have increased the premium by about 5% if it had been aware of Mr C's conviction.

complaint upheld

We accepted Mr C's assertion that his failure to disclose his conviction was not deliberate and that he had genuinely overlooked the mis-statement on the pre-printed form. The firm told us that if Mr C had disclosed the convictions, it would have offered cover for a minimal premium increase – about £20.

Non-disclosure is a serious matter. But in the circumstances of this case, it seemed to us unreasonable for the firm to avoid meeting the claim on the grounds of Mr C's non-disclosure. We thought it likely that if Mr C had told the firm about the convictions, he would have accepted the quotation and the firm would subsequently have met the claim. So we required the insurer to reimburse the cost of repairs, after recalculating the premium to include the increase, and deducting this recalculated premium from the total sum it paid Mr C.

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■ 18/04

household – non-disclosure – oral representations – burden of proof.

Mr O applied by telephone for household insurance. He answered various questions and the insurer then sent him a statement of the facts it considered relevant to his application. It asked Mr O to check the statement and let it know if any of the facts had been recorded incorrectly. The statement read in part: *'Neither you, nor anyone normally living with you, have ever been convicted of, or have any prosecutions pending for, any criminal offence (other than motoring offences).'* Mr O did not make any corrections.

Some time later, Mr O needed to make a claim. In response to a question about convictions, he stated on the claim form that he did not have any. However, when a claims investigator interviewed him, he said he had been convicted only once – for theft – when he was 18. The insurer made further enquiries and found that more recently – in 1997 – Mr O had been convicted for causing criminal damage.

The insurer cancelled Mr O's insurance and said it would not have issued the policy if it had been aware of the conviction. Mr O insisted that he had told the telesales operator about it, even though he did not consider it relevant to his household insurance.

complaint rejected

Given Mr O's incorrect statement on the claim form, we were unable to accept his assertion that he had disclosed his conviction when he applied for the insurance. We considered the insurer had been fully justified in treating the insurance as if it had never been issued. It therefore had no liability for meeting Mr O's claim.

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■ **18/05**

motor – non-disclosure – call recorded by insurer – whether proof of non-disclosure.

Mr A's son telephoned the insurer to arrange motor insurance for himself and his father. After receiving the policy, he telephoned the insurer again to say it had made a mistake. He said his father, rather than himself, should be named as the policyholder and main driver. He stated that his father was the registered owner of the car. The insurer then issued new papers.

When the car was reported stolen, the insurer investigated the claim and found that it was the son who was the owner and main user, not the father. Mr A confirmed this. He said they had registered the policy in his name because the premium was cheaper this way. The insurer then cancelled the insurance, saying it would not have issued this policy if it had known the true situation.

Mr A argued that the car belonged to the whole family and had been a joint purchase, even though it was registered in the son's name. The insurer had recorded the calls and produced a transcript of the son's second call, in which he said the firm had made a 'mistake' in naming his father as the policyholder.

Mr A then argued that he did not speak or read English and he claimed that the investigator had not recorded his statement correctly.

complaint rejected

We were not satisfied that Mr A had given the insurer correct information when it agreed to issue this policy. Mr A's son stated clearly that he was not the main user and that it was a mistake to issue the policy in his name. Mr A's first statement to the investigator confirmed that his son was the car owner and main user. Mr A subsequently contradicted this, but we noted that his signed statement included numerous alterations which he had added and initialled.

We concluded that the insurer was fully entitled to cancel the insurance and reject Mr A's theft claim.

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