DRN-4913220

The complaint

A limited company, which I will refer to as S, complains about the settlement offered in relation to its commercial motor insurance claim by Aioi Nissay Dowa Insurance UK Limited.

What happened

The following is intended only as a brief summary of events. Additionally, whilst other parties have been involved in the claim and complaint, for the sake of simplicity, I have just referred to S and Aioi Nissay Dowa Insurance UK Limited (ANDI).

S operates as what I will refer to as an electrical engineer business. The director of S took out a commercial motor insurance policy underwritten by ANDI. The policy provided cover for a vehicle registered to S, for use in S's business.

In December 2023, S's vehicle suffered damage and a claim was made under the policy. ANDI's engineer deemed the vehicle beyond economical repair, so ANDI offered to settle the claim on a total loss basis. It offered S £12,084, saying this was the pre-accident market value of the vehicle.

S disputed this valuation, saying that it had seen similar vehicles being advertised for sale for between £19,000 and £21,000. ANDI did not change the amount of its offer, but did say that S could accept this as an interim payment whilst the total sum was disputed. S declined this offer and brought its complaint to the Ombudsman Service.

S also complained about the time taken for ANDI to deal with the claim, and that the alternative vehicle it had been temporarily provided had to be returned before the dispute was resolved.

Our Investigator considered that ANDI's offer was lower than what was fair and reasonable. And recommended that ANDI increase this to £12,773 (paying interest on the difference). Neither S nor ANDI responded to this view, and so the complaint was passed to me for a decision.

More recently, the director of S has said that this issue has caused a lot of inconvenience and a loss of work, as well as having a personal impact.

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 have come to the same conclusions as our Investigator, largely for the same reasons.

Under the terms of S's policy, where a vehicle has been damaged beyond economical repair and so is deemed a total loss – as is the case here – ANDI is required to pay the market value at the time of the damage. Market value is defined within the policy wordings, and both parties are aware of this.

These points are not really in dispute. What is in dispute is what the market value of S's vehicle was at the time of the damage.

As has previously been mentioned, valuing vehicles for the purpose of meeting claims of this nature is not an exact science. However, the Ombudsman Service's starting point when thinking about whether an insurer has fairly valued a vehicle is to consider the industry trade guides.

ANDI did base its offer on one of these guides. However, the Ombudsman Service general approach is that it is fair and reasonable to consider a number of the guides, rather than just one. The Investigator has previously set out that available guides gave indicative valuations of between £10,950 and £12,773. ANDI's offer sits in the middle of this range, and aligns with the value provided by one of the guides.

As this offer is below the higher end of this range, I need to consider whether making this offer – rather than one that aligns with the top of the range – was fair and reasonable.

The higher guide value, is around 5.7% higher than the valuation ANDI offered. So, I consider this is materially different. And I would need to see persuasive evidence to agree that the lower valuation is fair and reasonable.

I have considered the other evidence ANDI provided, in the form of example adverts for vehicles for sale. However, like the Investigator, I do not find these persuasive that a value lower than the top end of the range is a fair offer. The adverts either relate to vehicles with a different mileage or to slightly different models of the vehicle. So, a direct comparison with S's vehicle is not possible. Based on this, I am not persuaded that ANDI made a fair and reasonable offer when basing the valuation on this middle of the range of guide values.

S has also said that it has seen adverts for vehicles at a higher price. However, full details of these have not been provided to the Ombudsman Service. And based on the information I have seen about these other adverts, they also were not for exactly the same vehicle. Ultimately, I have not been provided with anything to persuade me that it is fair and reasonable for this claim to have been settled above the higher valuation provided by the industry trade guides.

Taking these points into account, I consider the appropriate settlement under the claim ought to have been £12,773.

S has indicated that as ANDI did not offer to settle the claim at a higher level, and that the claim took a long time to be dealt with, it has been significantly impacted.

At this point, it is necessary for me to clarify who the complainant is here and what this means about the detriment that I can consider.

The policy actually lists the policyholder as the director of S. However, the policy is a commercial policy. And whilst the policy does cover social and domestic use, I consider that the main purpose of this commercial policy was to cover the vehicle's commercial use. So, if the director were to be considered the policyholder in his own right, he would be an individual acting mainly for the purpose of his trade, business or profession.

The rules that set out the jurisdiction of which individuals can bring a complaint to the Ombudsman Service (the Dispute Resolution: Complaints part of the FCA Handbook – specifically DISP 2.7) say that an individual acting for the purpose of his trade, business or profession would not be an eligible complainant. This would mean that, in relation to this particular complaint, I would not be able to consider a complaint directly from S's director.

However, it is notable that the vehicle itself was apparently registered to S, rather the director. So, the issue here seems to be with how the policy was set up. And I consider it is appropriate to consider that, despite the name that appears on the policy document, the actual policyholder ought to be considered as S.

S, as a microenterprise, is an eligible complainant for the purposes of this complaint. So, I consider that I am able to consider this complaint. However, when doing so, I need to consider what the detriment was to S. S is a limited company and so has its own legal identity. S can suffer inconvenience. However, as a limited company, it cannot suffer distress.

This means that, whilst I note and am sorry to hear about the personal impact this situation has had on S's director, I am unable to take this into account when considering the impact caused by ANDI's failure to make a fair and reasonable offer of settlement.

In terms of the impact of this on S itself, I note that reference has been made to this situation causing a loss of work, etc. I can appreciate that without a vehicle, S may well have suffered this loss of work. But I also need to think about whether S acted to mitigate its losses. It is notable that ANDI offered to make an interim settlement of the £12,084, and explained that this would not prevent S challenging this settlement figure. S chose not to take this. This means that the only detriment that I can consider is in relation to the additional £689 I consider ought to be paid in relation to the settlement.

Ultimately, based on the evidence provided, I am not persuaded that the lack of this money – had the other part of the settlement been paid – would have caused the full detriment S has referred to.

S was also unhappy with how the claim was handled generally. However, whilst I think a higher offer ought to have been made, the offer ANDI did make was made within only a few weeks of the claim. It then took a bit of time for ANDI to consider S's objections to this, but I am not persuaded that this caused any material detriment to S above that caused by the offer being too low generally.

Our Investigator recommended that ANDI add interest to this £689 from the date the £12,084 offer was made to the date of settlement. I consider that this is a suitable way to compensate S for not having had this money and for any inconvenience caused by having received the lower offer.

S has also complained about issues relating to the removal of a replacement vehicle temporarily provided. However, whilst I can appreciate this would have caused issues, this was not a decision or issue ANDI was directly involved in. The replacement vehicle had been provided by the insurer of the third party who had caused the damage to S's vehicle. And the decision to remove this facility was not one that ANDI made. So, I am unable to hold ANDI responsible for any issues connected to this.

I should also say that S's policy did not provide a temporary replacement vehicle where a claim is considered a total loss. Neither did the policy provide legal cover, which might have meant ANDI should assist S with the recovery of uninsured losses.

Putting things right

Aioi Nissay Dowa Insurance UK Limited should put things right by settling S's claim for £12,773 (subject to the remaining terms of the policy). And by paying S interest at a rate of 8% simple per annum on the portion of this settlement above its original offer. This interest should be calculated from 15 January 2024 to the date of settlement.

My final decision

My final decision is that I uphold this complaint. Aioi Nissay Dowa Insurance UK Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 30 August 2024.

Sam Thomas
Ombudsman