

The complaint

Mr J complains that Tradex Insurance Company PLC (“Tradex”) dealt with a claim against his motor trade insurance policy despite him informing them he would deal with it directly.

What happened

Mr J’s son was involved in an accident while driving Mr J’s car. Mr J says, although his son wasn’t covered as a named driver under his policy with Tradex, he allowed his son to drive his car on the understanding that he had his own insurance. Following the accident, and after discussing this with Tradex, Mr J discovered that his son didn’t have his own insurance. Mr J says he then emailed Tradex to inform them he would deal with the claim. A few months later, Tradex contacted Mr J and informed him they’d settled the claim with the third party and were now looking to recover their outlay from him. Mr J complained to Tradex about them dealing with the claim without his consent, incorrectly claiming that he hadn’t reported the accident to them and about not providing him with a breakdown of their costs.

Tradex responded and explained they’d taken Mr J’s email, saying he would deal with the claim, as being an instruction for them to deal with the claim. Tradex said, in any event, they’d received a claim form from the third party and, although Mr J’s son was uninsured, Mr J had given his son permission to drive his car which was insured by Tradex, so Tradex had a legal obligation to deal with the claim. Tradex said they wouldn’t itemise the costs in the letter sent to Mr J informing him about their costs, but they are able to provide this if Mr J asked for it. Tradex said they could see a breakdown was provided in later correspondence. Tradex accepted they’d made an error in incorrectly claiming Mr J hadn’t informed them about the accident and paid £100 compensation.

Our investigator looked into things for Mr J. He thought Tradex hadn’t acted unfairly in settling the third-party claim and that the £100 offered was fair for the incorrect information. Mr J disagreed so the matter has come to me for a 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’ve decided not to uphold the complaint. I understand Mr J will be disappointed by this but I’ll explain why I have made this decision.

There’s no dispute between the parties that Mr J’s son was driving Mr J’s car, uninsured, at the time of the accident. The information shows an accident management company, acting for the third-party driver, sent a claim notification form to Tradex. I can see there was then a discussion between Mr J and Tradex during which Mr J explained his son was driving the car on his own insurance. It later came to light that Mr J’s son’s insurance had lapsed so he didn’t have any cover under his own policy. Mr J then confirmed this to Tradex and said, *“Therefore, it would appear that we will have to deal with this.”*

Around two weeks later, Tradex sent Mr J a letter which said Mr J's son wasn't a permitted driver under Mr J's policy. Tradex confirmed, on this basis, they're unable to provide indemnity – they said this meant they weren't able to offer any financial assistance. So, I think Tradex clearly explained they weren't going to provide cover for the accident.

The letter went further though and said, although Tradex were unable to indemnify Mr J under the terms and conditions of his contract of insurance, “...it is possible we might retain a legal liability to the third party claimant(s) if an unsatisfied County Court Judgement is obtained against the driver of the vehicle.” and “If you require us to negotiate settlement of the third party claim(s) on your behalf, or on behalf of the driver of your vehicle, the attached Form of Consent and Indemnity should be completed and returned to us.”

The letter also explained, “Please note that all sums we pay (including legal costs) as a result of an unsatisfied judgment or on receipt of signed consent and indemnity are recoverable from the policyholder and from the driver of the vehicle if that person is not the policyholder.” I think these parts of the letter explained Tradex may have to deal with the claim, asked Mr J to complete a form consenting to Tradex dealing with the claim and also explained that any costs incurred by Tradex would be recoverable from Mr J. The consent form, which was attached, explained that, despite Tradex declining to indemnify Mr J, Tradex, “may still have a statutory liability under the Road Traffic Acts to deal with third party claims for...damage to property arising from the accident.”

I can't see Mr J signed the Form of Consent and Indemnity, but the information shows Tradex went ahead and settled the claim with the third party. So, I've considered whether Tradex acted reasonably in settling the claim despite not having a signed consent form. Firstly, there's the misunderstanding around Mr J's email. In this email Mr J confirmed his son didn't have insurance and “Therefore, it would appear that we will have to deal with this.” Mr J says the meaning behind this statement was that he and his son would deal with the third-party claim. He says his son approached the third party and offered £1,400 for their car, which was £500 more than what the third party had paid for it, and also two weeks car hire. Tradex say they took the statement as Mr J's acknowledgement that Tradex would need to deal with the claim.

I think the statement could be interpreted either way, but it would perhaps have been helpful for Tradex to have clarified this. That said, this wasn't the only reason for them dealing with the claim. I acknowledge Mr J says his son had made an offer to the third party, but the information shows the third party appointed a claims management company to deal with his claim and this led to a claim notification form being sent to Tradex. So, it's clear the third party wanted to pursue a claim against Mr J's insurer. Tradex have also referred to them having a legal liability to deal with the claim, so I've also considered this point further as it's relevant law.

Under section 151(2)(b) of the Road Traffic Act 1988 (“RTA”) an insurer is obliged to meet a third-party judgment against a person driving a car insured by the insurer but who isn't covered under the policy. What that means is, an insurer needs to consider claims as if the policy's valid and whoever was driving was insured on it.

On the face of it, without a judgment, Tradex weren't under any obligation to pay so it could be said that Tradex can't use the legislation to support their request to Mr J to pay them back. I've noted I had to take the law into account and on this basis, a strict reading of the RTA 1988 would mean I don't think it was right to say Tradex had to pay because of it.

But whilst I take the law into account, I also have to consider what is fair and reasonable in the circumstances. Mr J's insurance policy terms and conditions say the following:

“Rights of recovery

If the law of any country in which this policy operates obliges us to pay a claim which we would not otherwise have paid, we may recover this amount from you or the person who incurred the liability."

I can see Tradex sent a Form of Consent and Indemnity to Mr J to sign. The form requested Mr J's consent to act on his behalf in dealing with any claim, including settling out of court. The form also said Mr J would be required to reimburse Tradex the full costs they have incurred in dealing with the accident. Mr J didn't return this form to Tradex.

It's clear Tradex attempted to get Mr J's agreement for them to deal with the claim. Tradex could've simply left it at that and allowed the case to proceed to court and have judgment entered. But I think it was fair for Tradex to settle without Mr J's agreement. There doesn't appear to be any dispute about liability for the accident – and Mr J has confirmed his son had made attempts to settle the claim directly with the third party. I think this demonstrates that Mr J's son accepted that he was at fault for the accident, and there's nothing that suggests a court would've found anything different. And this meant that the court would've had to consider what damages were payable to the third party.

So although Tradex might not have had to pay out under the RTA 1988 at the time they did, I think it was more likely than not that they would've had to pay out at some point if they allowed the case to go to court. And they were entitled to take steps to minimise their potential outlay. So I think Tradex only paid out because of the requirement of the RTA 1988 – so I can't say they've acted unfairly in dealing with, and settling, the claim.

I acknowledge Mr J says Tradex confirmed to him in writing that they'd declined to cover the claim, and they've also acted against their own process by dealing with a claim in circumstances where Mr J didn't sign their consent form. I can see Mr J has raised various points about there being a lack of express consent and that Tradex continued to process and record information about him and the claim despite not having any consent for them to do so. I have considered all of Mr J's points and it does come back to the question, was it fair in the circumstances for Tradex to deal with the claim despite not having Mr J's consent to do so? For the reasons I've explained above, in particular, the requirements of the RTA 1988, I think Tradex acted fairly. I acknowledge the impact Mr J says this event has had and continues to have on him. But, as I'm not upholding this part of the complaint, I can't direct Tradex to take any action to put things right.

I can see Mr J is also concerned about not receiving a breakdown of Tradex's costs outlay when he was first notified about it. I acknowledge Mr J's concern about being asked to reimburse Tradex £4,571.50 without having itemised the total costs. I can see Tradex say they wouldn't generally include this in the original letter sent to Mr J, but they would, on request from Mr J, provide a detailed breakdown. Tradex confirm this was then sent to Mr J following his complaint. So, I think Tradex have taken reasonable steps here in providing this to Mr J.

There's no dispute between the parties that a letter sent to Mr J contained incorrect information. In this letter, Tradex claimed Mr J hadn't reported the accident to them – but Tradex accept this section of the letter was included inadvertently and acknowledge the accident had been reported to them. I acknowledge this was upsetting and frustrating for Mr J and, despite Tradex confirming their error later, this still had an impact on Mr J at the time of reading the letter. So, taking into account the impact, and its duration, I think the £100 compensation Tradex have paid Mr J is fair and reasonable in the circumstances.

I understand Mr J will be disappointed, but I wish to reassure Mr J I've read and considered everything he has sent in, but if I haven't mentioned a particular point or piece of evidence, it

isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

My final decision

For the reasons I have given, it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 31 July 2025.

Paviter Dhaddy
Ombudsman