

complaint

Mrs H complains that One Insurance Limited (One) is holding her responsible for damage to a courtesy car supplied under her motor insurance policy. She wants it to accept liability for the damage.

background

One's approved repairer provided Mrs H with a replacement car under her policy whilst hers was being repaired after an accident. Mr H (the named driver) put the wrong fuel into the courtesy car. The garage is now seeking the repair costs from Mrs H. It has started court action against her.

Our adjudicator recommended that the complaint should be upheld. She thought that because the repairer was One's agent, then One should be held responsible for the repairer's decision to start court action.

One said that it made it clear that the courtesy car was diesel. But the adjudicator thought it relied on the information on the key fob. She didn't think this was sufficient.

Although damage to the courtesy car was covered under Mrs H's policy, the adjudicator didn't think a claim should be set up. Recording the incident against the policy would prejudice Mrs H in the future due to One's failings. The adjudicator thought that One should be held liable for the costs of repairing the damage to the courtesy car.

my findings

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

One has provided a copy of Mrs H's policy. In this, Mrs H is entitled to a temporary replacement car if her car is being repaired by One's approved repairer. In this case, the replacement car is insured under Mrs H's policy. I think that this means that the repairing garage should be seeking reimbursement from One rather than Mrs H.

In that case, I think that damage to the replacement car under Mrs H's policy would usually be dealt with as a claim and Mrs H would be liable for the policy excess. This is £500, which is more than the garage's repair costs of £345. But I don't think it would be fair to set up a claim for this on Mrs H's policy.

I think that One hasn't shown that it gave Mrs H sufficient warning about the car's fuel type. I'll explain why.

One says that the garage attendant who delivered the car went through a standard procedure. But I haven't seen any confirmation of this. Mrs H says that he didn't tell her the car was diesel. One agrees that neither Mrs H nor the driver can prove what was said when the car was delivered. It then relied upon the information being on the car's key fob.

I've seen a photograph of the fob. It says in bold "diesel" on the back of the fob. But One hasn't said that it pointed this out to Mrs H. I can't see that the fuel type is mentioned elsewhere, for example, on the fuel cap or on the hire document. I don't think that One provided enough information or marked the car adequately to show that it used diesel.

One says that Mrs H had a diesel car and she was supplied with a diesel replacement car. It expected her to know this. But I don't think this is reasonable. I think it was for One to make Mrs H sufficiently aware that the replacement car was diesel fuelled. I don't think it did this. Therefore, I think Mrs H shouldn't be held responsible for putting the wrong fuel into the replacement car. I don't think that a separate claim under her policy should be set up.

I think Mrs H has been distressed to receive court proceedings for the recovery of costs that shouldn't have been directed to her in the first place. I think that One should reasonably compensate her for this. The adjudicator has recommended that it pay her £300. I agree that this is reasonable. It's in keeping with the level of award we'd recommend.

my final decision

For the reasons I've discussed, it is my final decision that I uphold this complaint. I require One Insurance Limited to do the following:

1. Instruct its agent to cease court proceedings and seek reimbursement of costs from One, not Mrs H.
2. Send Mrs H a letter of apology, confirming that court proceedings have been ceased.
3. Pay Mrs H £300 compensation for the distress and trouble caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 9 November 2015.

Phillip Berechree
ombudsman