

complaint

Mr O complains that Tradewise Insurance Company Limited didn't pay a theft claim he made on his motor trader insurance policy. It said the stolen vehicle had been modified.

background

Mr O bought the policy with Tradewise through a broker. Several vehicles were insured on it, including a recovery truck. The truck was stolen in July 2017. In dealing with the theft claim, Tradewise looked at the truck's V5 registration document. It was described as an *insulated van*. As the way the vehicle was used had changed, Tradewise said the theft wasn't covered. It said cover for any modified vehicle was limited to third party damage only. It said the restriction was set out clearly in the policy documents. Mr O said he'd bought the truck as a recovery vehicle and didn't know it was modified.

Our investigator thought the complaint should be upheld. He said photos Mr O gave to the broker showed it was a recovery truck. And he wasn't asked about modifications. The investigator noted that the vehicle was built in such a way that its form and usage could be easily varied. He thought changing its use was a standard design feature. And he thought Tradewise should have highlighted the exclusion to Mr O.

Tradewise said there was no doubt that the vehicle had been modified. And in its view, it was highly likely that the modification / change of use made the vehicle more attractive to thieves. It asked for a review of the complaint by an ombudsman.

my findings

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

The V5 shows the truck was once fitted with an insulated van body. By the time Mr O bought it, it was a recovery truck. There's no dispute about its use having changed. Tradewise hasn't said Mr O knew about that. But it thinks he *should* have known, as he had the V5, and that describes the vehicle as an insulated van.

I think Mr O had a duty to make a fair representation to Tradewise of the risk it was taking on. He had to disclose anything he knew or should have known that might influence its decision to offer full cover. I think Mr O *should* have known the vehicle's use had been changed. All he had to do was look at the V5. And as a motor trader, I'd have thought he'd be vigilant about that when buying every new vehicle.

But it's also the case that - unless asked - a customer doesn't have to disclose something an insurer knew or ought to have known. The vehicle in question is sold as a chassis cab, with the stated purpose of being customised. In this type of vehicle, an aftermarket fitment is chosen by the purchaser. Most manufacturers of such vehicles sell them in this way. So I think it's arguable that the vehicle was modified as soon as the first owner chose to add an insulated, tipper, flat-bed or other body to the chassis. I think Tradewise should have known it was likely a recovery vehicle wouldn't have left the production line in that form.

The broker didn't ask Mr O any questions about modifications or the vehicle's previous use. Tradewise didn't ask any questions either. The policy stated that modified vehicles weren't fully covered. I think the limitation was sufficiently highlighted. But Mr O didn't realise the

vehicle had been modified. So he didn't think any references to modifications applied to his truck. Had Tradewise or the broker asked a question about it, Mr O may have been prompted to check the V5, and this situation could have been avoided.

Tradewise offers full cover to recovery vehicles. So if Mr O's truck had always been used in that way there wouldn't have been a problem. I don't think there's a material difference in the risk it took on in insuring a recovery truck that was once used as an insulated van. Tradewise has speculated that the risk of theft to a recovery truck may have been greater. But it hasn't provided any evidence to support its assertion.

Taking everything into account, in this particular case - despite the change of use – I think it would be fair and reasonable for Tradewise to cover Mr O's claim.

my final decision

My final decision is that I uphold this complaint. I require Tradewise Insurance Company Limited to pay Mr O's claim, in line with the remaining policy terms and conditions. It should add interest to the sum payable, at the simple yearly rate of 8%, from the date of the claim until the date of settlement.

If Tradewise considers it's required by HM Revenue & Customs ("HMRC") to withhold income tax from the interest, it should tell Mr O how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 22 November 2018.

Susan Ewins
ombudsman