

complaint

Mr K complains that Octagon Insurance Company Limited treated his motor insurance policy as if it did not exist from the start (voided it) due to misrepresentation, provided poor service, withheld his no claims discount (NCD) and disposed of his car without his consent when he made a claim following a road traffic accident. He wants Octagon to repair and return his car or reimburse him for its loss.

background

Following a road traffic accident whilst his brother, the named driver, was driving the car, Mr K made a claim and the car was taken to Octagon's approved repairers for inspection. In a telephone call between the named driver and Octagon, it appeared that he was the car's main user and he lived at a different address to his brother, Mr K. Mr K declared that he was the registered owner and keeper of the car however the V5 registration document said that his brother was in fact the car's registered owner. Octagon's underwriters decided to void the policy from the start and the policy premiums were refunded. When Octagon tried to return the car to the named driver, he refused to accept it as he claimed that the car had been damaged further whilst in Octagon's care. Octagon said that it would not deal with the car at all as the policy had now been voided and wrote to Mr K requesting payment for the storage costs it had incurred. As Mr K and his brother did not collect their car, it was disposed of by Octagon and the salvage deducted from the amount owed.

The adjudicator recommended that the complaint should be upheld in part. He thought that Octagon had not made an error in voiding the policy as Mr K admitted that he had insured his brother as a named driver due to costs. The adjudicator saw evidence that the underwriters would not have offered terms if it had known that the car was kept at the named driver's address. He also thought that Octagon had correctly disposed of the car as Mr K had ample opportunity and warnings to collect it. The adjudicator upheld Mr K's complaint that his car was further damaged whilst in storage as Octagon did not provide contrary evidence. He recommended compensation for this. He also thought that the storage charges were due to Octagon taking time to decide its course of action, and Octagon agreed not to pursue these. He thought that Octagon should provide Mr K evidence of his NCD, which it was withholding awaiting reimbursement of amounts owed by Mr K, and that Octagon's communication was poor and that it should pay Mr K £150 compensation for this.

Octagon accepted the adjudicator's opinion, but Mr K responded that Octagon should reimburse him the cost of the car as it was repairable. He said that he and his brother did not receive the warning letters from Octagon and were never given the option to receive the car back at any stage.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I find that Octagon and Mr K have accepted the adjudicator's view on several points. They agree that it was not unreasonable for Octagon to void the policy, and therefore decline to consider the claim. I find from the underwriting criteria that had Octagon known that the car would be kept at the named driver's address, it would not have offered terms. Mr K says that he was planning to put the car in his own name, but I am not persuaded by this as he had already had the car for six months without doing so. I therefore find that Octagon's decision to void the policy and refund the premiums to be fair and reasonable.

Octagon has agreed to waive its storage charges which I find to be reasonable as it could have offered its free storage earlier and costs were incurred due to its delays in deciding its course of action. It has paid Mr K £150 compensation for its poor communication and further damage to the car at the repairing garage. I find that I agree that this is fair and reasonable as I find that Octagon did not investigate Mr K's concerns about the further damage, and cannot do so now that the car has been disposed of, and that the onus has been on Mr K to pursue Octagon for updates. It is open to Mr K to accept this offer. I find that I also agree that Octagon should supply Mr K with proof of his NCD as it has voided his policy. Our approach is that it is not fair that an insurer should withhold this pending repayment of any outstanding amounts as there are other recovery means available.

What remains in dispute is that Mr K says that Octagon should reimburse him the cost of the car as he said that he and his brother did not receive the warning letters from Octagon and were never given the option to receive the car back at any stage.

I find from the records that Octagon wrote to Mr K several times about his claim at his address, warning him that it would dispose of the car unless he reimbursed its costs, and that it also wrote twice to the named driver that it would dispose of it following a period of free storage unless it was reclaimed. I find from the call recordings provided that Mr K did not dispute that he understood this and, further, in the calls Octagon restated its intention. I therefore find that I am not persuaded that Mr K and his brother were not warned of Octagon's intentions. Further, I find that they had ample opportunity to arrange to recover the car and that it was not unfair or unreasonable for Octagon to dispose of it and deduct the salvage from the amount owed. It follows that I do not require Octagon to reimburse Mr K for the car.

my final decision

For the reasons above, it is my final decision that I uphold this complaint in part and I require Octagon Insurance Company Limited to do the following, as it has agreed to do:

1. Issue a letter to Mr K confirming his no claims discount, if any;
2. Waive the storage charges it has requested from Mr K.

Phillip Berechree
ombudsman