

complaint

Ms E complains Tradewise Insurance Company Limited ("Tradewise") unfairly declined a claim she made on her motor insurance policy.

Ms E is represented in bringing this complaint but for ease I'll refer to all actions and comments as being those of Ms E.

background

In February 2018 Ms E's car was stolen. The keys had been taken from her property by a family member and the car had been recovered by the police. It had been in an accident that had caused damage to her car and others.

Tradewise said the policy excludes loss or damage caused as a result a theft by a family member, so it declined the claim for damage to her car.

Ms E complained to Tradewise, she said the person who had stolen her car wasn't really a family member. And she'd asked the police to press charges. She also thought on reading the exclusion Tradewise had referred to; the damage to her vehicle should be covered. She said the exclusion said any payment would be limited to the cost of repairs, so this is what she wanted. She said the term was ambiguous and so should be read in her favour.

She also complained that Tradewise kept taking the premiums for her car insurance even though she didn't have the car. And that it didn't offer her a courtesy car. Tradewise didn't agree to change its mind. It said even if the person who stole Ms E's car wasn't her nephew the policy also excludes cover for theft by a friend. So Ms E brought her complaint to our service. Ms E asked for Tradewise to cover her claim and losses including her legal costs.

Our investigator thought Tradewise was entitled to rely on the exclusion to decline the claim. She noted Ms E had given the family member access to her property, and this is where they'd been able to take the car keys from. Her car had been involved in an accident with a third party, so her insurance had to cover this in line with legal requirements. So our investigator thought Tradewise had acted reasonably in collecting the insurance premium for the year. And she didn't think a courtesy car needed to be offered as Ms E wasn't covered for this under her policy.

Ms E didn't agree. So the matter has come to me to decide.

my findings

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 agree with the outcome reached by the investigator. I've explained why below.

When making a claim on an insurance policy, it is for the insured (so in this case Ms E) to demonstrate they've suffered a loss covered by the policy. If the insurer wants to decline the claim based on a policy exclusion it must show it can rely on it.

Ms E has suffered damage to her car as a result of a theft. But Tradewise has relied on the following exclusion:

"The insurance does not cover...

15) Loss or damage occasioned by theft or attempted theft or any malicious act expedited by or in anyway brought about by the Insured... Friend or member of their families. Any payment will be limited to the cost of repairs or, if stolen or beyond repair, to the value at the time of the loss or Accident."

Ms E initially said the thief was her nephew, she later said it wasn't really her nephew; they were related through extended family. 'Family' isn't defined under the policy, but I'm satisfied that he can be considered as a member of the family even if he wasn't immediate family as they were extended family and Ms E considered him to be her nephew. And even if I were to accept that he wasn't, he would meet the definition of friend; he was in Ms E's property with her permission and she'd given him her house keys to return when she wasn't there. I think this would be enough to satisfy a 'friend' under the policy.

I've also thought about whether Tradewise has acted fairly in relying on this exclusion, and I think it has. I appreciate Ms E didn't give permission to take the car, but this means the car was stolen. And the policy excludes damage when the car has been stolen by a family member or friend.

I note there is a further sentence of the exclusion which suggests a payment could be paid even in these circumstances. But I don't think this invalidates the previous exclusion as I'm satisfied that the policy is clear that it doesn't cover damage caused by a theft by a family member or friend. Tradewise has said it can use its discretion to make a limited payment under the policy, even when it could rely on the exclusion. It's given me some examples of when it would do this, but it's decided not to do so in this case. And I think it's acted reasonably in not doing so given the close connection between the two parties.

I've seen several other policies that don't cover theft by a family member. Although some will offer cover where the policyholder has agreed to press charges against the person who stole the vehicle. Because Tradewise doesn't do this, I think it's fair to expect it to highlight the term to make sure the policyholder is aware of it. In this case I can see this term is in the key facts document. I think this is enough to bring it to Ms E's attention so I think Tradewise can fairly rely on it.

I appreciate Ms E is unhappy that a courtesy car wasn't provided. But I don't think Tradewise was unreasonable in not providing one. Within a week of the theft being reported Tradewise had interviewed Ms E and told her the claim was likely to be declined. And it doesn't seem from looking at Ms E's policy that she was entitled to a courtesy car. So I think Tradewise acted reasonably in not providing one.

I'm aware Ms E has been charged the full insurance premium even though she was without her car for a period of the cover. This is because Tradewise received a claim from the owner of the other car that was damaged in the accident. Tradewise was obliged to cover the claim against Ms E's insurance policy. And given the claim amount was likely to exceed the premium Ms E paid, it is entitled to keep the full premium.

I appreciate this isn't the outcome Ms E was hoping for but I'm satisfied Tradewise has acted fairly, reasonably and in line with the terms and conditions of the policy. So it follows that I'm not going to ask it to compensate her for any losses, including her legal costs.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 14 March 2019.

Michelle Henderson
ombudsman