

## complaint

A has complained about UK Insurance Limited and its decision not to pay a claim for the total loss of a car insured under the terms of its Motor Trade Road Risks policy.

## background

A, a premium car sales company, said it had been given a car owned by Mr J to sell. Mr J took this car out for a test drive with a potential buyer when the car was involved in an accident. Mr J was driving the car at the time on the grounds of his private estate, as a named driver under A's motor policy with UKI. UKI refused to pay the claim on the basis that the car wasn't in the "custody or control" of A at the time of the accident. There's also a dispute over whether or not Mr J could be considered to be acting for A when driving this car.

UKI referred to the policy, which covers:

*"Any Motor Vehicle the property of the Policyholder or in the custody or control in connection with his business"*

UKI didn't think that the car was insured under the terms of the policy, as it wasn't owned by A, instead it was owned by Mr J. So UKI said this car couldn't be considered to be in A's "custody or control" either. UKI has also said that as A doesn't own the car then A doesn't have what is called an "insurable interest" in the car and so hasn't suffered any loss.

UKI has also said that the car wasn't ever covered for any loss or damage when it was being driven on the business premises of A. The policy says:

*"The Company will provide insurance as described...but excluding:*

*Any Insured Vehicle whilst in, or on:*

- i any Business Premises owned or occupied by the Insured*
- ii any other place at which the Insured is carrying on motor trade activities (other than a road or public highway within the meaning of the Road Traffic Acts)."*

A disagrees. It says that the car was put into its "custody" by Mr J in order to be sold and so it then accepted responsibility to make sure the car was insured. It says any loss or damage was its responsibility and so Mr J should be able to get A to pay for the loss of his car and A should be able to claim on its insurance policy for that loss.

A has also said that the accident occurred on an access road, which it says the police consider is a public highway. And so it was wrong for UKI to say this road should be classed as "Business Premises".

A obtained a statement from the person who was being driven by Mr J at the time of the accident. A says this statement shows this person contacted it rather than Mr J about buying this car which A believes shows it had "custody" of the car.

The adjudicator who assessed the complaint initially said he didn't think that A ever held the car in its "custody or control" and so wasn't covered by the policy.

A later provided a statement from a repairer who carried out work on the car in July 2012. But UKI said Mr J's own statement said he imported the car into the UK in August 2012, which couldn't be right.

The adjudicator felt it was clear that this car was never in the "*custody and control*" of A and so UKI didn't have to pay the claim. A disagreed and so the matter has been passed to me to decide.

### **my findings**

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

For A's claim to be valid it has to show that it had "*custody and control*" of the car and that the loss happened on "*a public road (as defined by the Road Traffic Acts).*"

#### *custody and control*

Mr J said in an interview with UKI's representative that he was not employed by A. He said that his only connection to A is that he lent it an amount of money previously but that he known the owner of A for many years. He confirmed that A's business premises were on his estate and that A paid him rent for those premises. Mr J is also named as a driver on A's policy. A has also said that Mr J has carried out some work collecting vehicles on behalf of A, but no other work. The owner of A says that he doesn't drive.

There is some confusion of when exactly Mr J supposedly gave his car to A in order to sell it for him, whether it was in 2010 or when exactly in 2012 as Mr J says one thing and A and various employees of A say another. Mr J clearly says his car wasn't registered in the UK until 16 August 2012 but a car doesn't have to be registered in the UK in order to be sold. Therefore I think there's some confusion over whether or not the car was in the UK before this registration date. However the car can't be driven on the public highway unless it's properly registered, so I don't think any of this evidence is relevant to show me clearly that A did indeed have "*custody and control*" of Mr J's car at the time of the accident.

At the time of the accident Mr J told UKI's investigator that he was showing his friend his car. He also said he had asked A to source a buyer for him and that then this car was added to A's stock of cars. But at the time of the accident, Mr J was still the owner, so I think that Mr J had "*custody and control*" of his own car, given he said he was showing his friend his car. I also can't see how anyone other than Mr J had an "*insurable interest*" in the car. Therefore, I don't believe A has shown that this car was in its "*custody and control*" at the time of the accident.

#### *did the accident happen on a road?*

A hasn't produced any evidence from the police to confirm they think Mr J's long driveway, where the accident happened is a "public highway", given Mr J told UKI's investigator that he was taking his car for a demo drive to the end of his drive which was a quarter of a mile long. So, I think Mr J was driving his own car on his own land and there's no evidence to show that it was a "public highway".

Cover under A's policy for A's claim for this car is only given if the accident happened on a public highway as it excludes anywhere else as the policy doesn't provide cover for claims

like A's claim that arise out of A's motor trade activities. So even though I'm not convinced A had the necessary "*custody and control*" of Mr J's car for Mr J's car to be properly covered initially by A's policy, I also don't think the accident happened on a public highway, rather it happened on Mr J's estate where A had its business premises.

Therefore I don't think UKI did anything wrong or against its own policy conditions in refusing to pay A's claim.

**my final decision**

For the reasons I've discussed above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask A to accept or reject my decision before 18 June 2015.

Rona Doyle  
**ombudsman**