

complaint

Mr A complains that One Insurance Limited should pay his claim on a motor insurance policy.

background

After it was damaged in an accident, One Insurance said it wouldn't have insured Mr A's vehicle if he'd told it that someone had modified it from the standard model. One Insurance treated the policy as "void" – as if it had never existed. Mr A complained that it should pay his claim.

our adjudicator's view

The adjudicator recommended that the complaint should be upheld in part. She didn't think that she'd seen any conclusive evidence that any performance-enhancing modifications were present on the car at the time of the accident. She recommended that One Insurance should:

1. treat the policy as if it were in force and pay the claim as per the estimate dated 8/3/2016 in the sum of £6,529.71 (without VAT) less any policy excess and any premium that should have been charged for the undisclosed conviction or that had been refunded when the policy was voided;
2. remove the voidance from Mr A's record on any internal and external databases;
3. pay Mr A £200 compensation for the trouble and upset he has experienced.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr A and to One Insurance on 10 October 2016. I summarise my findings:

I didn't think One Insurance treated Mr A fairly by turning down his claim first on the grounds of modifications which it later said it might have accepted and – months later – on the grounds of modifications which hadn't been there.

Mr A had provided a copy of an estimate for repairs dated March 2016.

Unlike the adjudicator, I didn't think it would be fair and reasonable to order One Insurance to pay the amount of that estimate.

Rather, I thought it would be fair and reasonable to order the insurer not to treat or record the policy as void on the grounds of modifications – but to meet the claim in line with the other policy terms

Subject to any further information from Mr A or from One Insurance, my provisional decision was that I was minded to uphold this complaint in part. I intended to order One Insurance Limited to:

1. not treat the policy as void on the grounds that Mr A hadn't disclosed modifications to his vehicle;

2. meet the claim in line with the policy terms other than any terms about failing to disclose modifications;
3. add simple interest at a yearly rate of 8% on any net sum it pays Mr A from the date of his claim to the date of payment. HM Revenue & Customs requires One Insurance to take off tax from this interest. One Insurance must give Mr A a certificate showing how much tax it's taken off if he asks for one;
4. remove from any internal and external databases any record that the policy was void;
5. pay Mr A £100 compensation for trouble and upset.

Mr A says he has nothing to add in response to the provisional decision.

One Insurance accepts the provisional decision.

Therefore I see no reason to change the findings of the provisional decision.

my findings

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

From the registration document, I think that a well-known company made the vehicle in about 2009. The engine power output was recorded as 220 kilowatts.

The policy documents contain - after the make and model - a reference (in brackets) to "(300)". I think that's the manufacturer's estimate of the engine power output in brake horse power (BHP).

The policy documents say Mr A bought the vehicle in May 2014 for about £21,000. He insured it at that time with One Insurance.

From the policy proposal, I think the insurer (or someone on its behalf) asked Mr A the following question:

"Has the vehicle been modified or altered from the manufacturer's specification (including the addition of optional fit accessories such as spoilers, alloy wheels etc.)?"

The proposal records Mr A's answer:

"NO"

As he'd only just bought the vehicle, I find it likely that this answer was correct to the best of his knowledge.

There was also a question and answer about convictions. I've seen no evidence that Mr A answered that incorrectly.

From the renewal proposal a year later, I think the insurer (or someone on its behalf) asked Mr A the same question as before about modifications.

And Mr A gave the same answer.

But I don't think his answer was still correct. By the time of his accident, Mr A had had the car for about a year and eight months. A photograph after the accident shows a number of unusual green-coloured components in the engine bay. It's possible that Mr A had done all the modifications in the eight months after renewing the policy. But I find it more likely that Mr A had done at least some of them in his first year of ownership of the vehicle.

As the modifications were so obvious under the bonnet, I think Mr A had been careless in giving an answer that there were no modifications.

After the accident, his insurer began to deal with Mr A's claim in the usual way and to discuss the cost of repairs with a garage he'd chosen.

But after it saw the photograph, One Insurance expressed concern about the modified air filter. The insurer cancelled the policy and treated it as if it had never existed.

One Insurance said it would refund the premium – unless someone had made a claim. Neither Mr A nor One Insurance has said whether any third party made a claim or whether the insurer refunded the premium.

Mr A complained that One Insurance hadn't inspected the vehicle.

So - several months after the accident - his insurer sent an inspector to look at the vehicle at Mr A's home. The inspector reported as follows:

"at the home of your client...having no wheels fitted...heavily modified vehicle... map currently within the ECU... gives approx. 360 BHP and 500 Nm torque which is substantially more than a standard car"

So I accept that someone had "re-mapped" the electronic control unit of the engine to give it 60 more BHP than when it was made.

One Insurance has given limited information about its underwriting criteria. It says that it might've accepted modifications to the air filter and to the cosmetic appearance of the car. But it says it wouldn't have insured the vehicle if it had known of the re-mapping.

The photograph after the accident couldn't show electronic changes. And there's not enough engineering evidence that the photograph shows associated changes such as an uprated intercooler.

Furthermore, Mr A has provided a photograph of an invoice for a re-map dated 23 April 2016 – after the accident but before the inspector visited his home. That document has some inconsistent spellings and a lack of business details. But the adjudicator rang the business and it verified that it had done the work.

Therefore, I don't find that the re-mapping was present at the time of the accident.

And I don't think One Insurance treated Mr A fairly by turning down his claim first on the grounds of modifications which it later said it might have accepted and – months later - on the grounds of modifications which hadn't been there.

Mr A has provided a copy of an estimate for repairs dated March 2016. And I've seen a photograph of the repaired car. But the estimate is in the form of a template. It's for about £6,500 plus VAT. But it doesn't quote a VAT registration number.

Also, there's no document to show that Mr A paid the amount of the estimate, with or without VAT.

And it's possible that – if it had considered the claim – the insurer might've decided the vehicle was beyond economic repair.

So – unlike the adjudicator – I don't think it would be fair and reasonable to order One Insurance to pay the amount of that estimate (excluding VAT).

Rather, I think it's fair and reasonable to order the insurer not to treat or record the policy as void on the grounds of modifications – but to meet the claim in line with the other policy terms. I will also order it to add interest at our usual rate on any net payment it makes after deduction of excess and any refunded premium.

I accept that – by a decision I've found unfair – One Insurance delayed Mr A's claim. But he hasn't given enough details to persuade me that the insurer caused him to lose the use of his vehicle for any particular period.

I don't doubt that the insurer's decision caused Mr A some extra upset and put him to some extra trouble at an already difficult time for him. But – keeping in mind the extent of its responsibility for this – I think £100 is fair and reasonable compensation.

my final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I order One Insurance Limited to:

1. not treat the policy as void on the grounds that Mr A hadn't disclosed modifications to his vehicle;
2. meet the claim in line with the policy terms other than any terms about failing to disclose modifications;
3. add simple interest at a yearly rate of 8% on any net sum it pays Mr A from the date of his claim to the date of payment. HM Revenue & Customs requires One Insurance to take off tax from this interest. One Insurance must give Mr A a certificate showing how much tax it's taken off if he asks for one;
4. remove from any internal and external databases any record that the policy was void;
5. pay Mr A £100 compensation for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 28 November 2016.

Christopher Gilbert
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