

complaint

Mr M has complained about the way Tradewise Insurance Company Limited has dealt with two claims under his motor trade road risks policy.

background

Mr M's wife – who was a named driver on his policy – had an accident on a country lane in May 2015. Mr M said he didn't want to make a claim on his policy for the damage to his car, but the other driver made a claim against Mr M's policy. Mr M said the accident wasn't his wife's fault, and the other driver was fully to blame. Tradewise sent Mr M an accident report form (ARF) to complete, but they said they didn't receive it back despite writing to Mr M several times. They then sent him a letter saying that he had seven days to send them the completed ARF, or they would cancel his policy, and wouldn't provide an indemnity under his policy. Mr M then sent them the ARF and some photos of the damage to his car. The other driver's insurer didn't agree that their driver was full to blame, and said both drivers should share the blame. Mr M thought this claim was closed, but when he came to renew his policy in March 2016, he found it was still outstanding and it affected his premium. So he complained about the way Tradewise had handled the claim.

In January 2016, Mr M lent a car to a friend, who then had an accident on a country lane. This friend told Mr M he was covered to drive other cars under his own insurance, and that he'd paid for the other driver's repairs himself. But when Tradewise contacted him about the accident, he didn't send them proof of his insurance cover. And the other driver said he hadn't paid for their repairs. So Tradewise had to deal with the other driver's claim as the car was covered on Mr M's policy. Tradewise said they'd asked Mr M and his friend to send them a written statement of what happened and photos, but they didn't receive until May 2016. So they paid the other driver's claim in full and then sent Mr M a letter asking him to repay them this money, which was around £10,000. So Mr M complained.

Tradewise said that in regard to the first claim, they'd contacted Mr M several times to ask for the ARF and photos, but didn't receive these until four months after the accident. As Mr M hadn't made a claim on his policy, they couldn't take action against the other driver, but had to wait for the other driver to pursue his claim against Mr M's policy, so they couldn't close the claim. And as there weren't any witnesses, and the evidence supported both driver's accounts of what happened, it was reasonable of them to agree with the other driver's insurer that both drivers were equally to blame.

In terms of the second claim, they explained that there had been delays in getting the information and evidence they needed from Mr M and his friend. So they had to deal with the other driver's claim because Mr M's friend didn't have insurance cover to drive Mr M's car. This meant that Tradewise had a right to recover the money they'd spent from Mr M. Mr M wasn't happy so he brought his complaint to us.

The adjudicator who investigated Mr M's complaint thought Tradewise had dealt with both claims fairly. He said Tradewise had to re-open the first claim as the other driver made a claim against Mr M's policy. And there was no evidence to clearly support either driver's account of what happened, so he thought it was reasonable that Tradewise agreed that both drivers were equally to blame. He said Tradewise had tried to get hold of Mr M's friend several times to discuss the second claim, but hadn't been able to. He hadn't sent them proof he was insured to drive Mr M's car on his own policy. And he'd said the other driver was to blame, but he didn't send Tradewise the evidence they'd asked for to support this. So

Tradewise had to deal with the other driver's claim against Mr M's policy. And Tradewise were allowed to ask Mr M to reimburse them for the money they'd spent on this claim.

Mr M disagreed. He said:

- they shouldn't have settled a claim that wasn't his fault.
- he'd sent them a letter recorded delivery about the second claim, but they'd settled the other driver's claim without looking at the evidence and without his agreement.
- the other car didn't have much damage on it, so he thought Tradewise had paid them too much.
- they shouldn't be allowed to ask him for the money because he wasn't driving the car, and he had comprehensive insurance.

So his complaint has been passed 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've decided to uphold it in part.

Mr M's policy says Tradewise '*shall be permitted to take over and deal with the defence or settlement of any claim in respect of any liability covered by this insurance*'. So Mr M's policy gives Tradewise the right to deal with claims on his policy. But in doing so, I think they have to treat Mr M fairly. Based on the evidence I've seen, I think they have treated him fairly. Mr M's complaint involves two claims, and I will deal with these separately.

claim 1 – May 2015

Because the third party made a claim against Mr M's policy, Tradewise had to re-open the claim, as they are required to do as his insurer. Mr M's policy says Tradewise '*shall be given all information and assistance they may require in connection with any ... incident or claim*'. The policy also allows Tradewise to give seven days' notice to cancel the policy. Mr M complained that Tradewise sent him a letter threatening to cancel his policy in seven days if he didn't return the completed ARF. This was in October 2015 – five months after the accident. And Tradewise had sent Mr M several letters asking him to return the ARF and send them photos of the damage to his car, but they hadn't received it. So I don't think this was unfair because the policy terms say Mr M will give them the information and assistance they require about a claim. Mr M then sent this a few days later and Tradewise didn't cancel his policy.

Tradewise did try to dispute who was at fault with the other driver's insurer. But I don't think there was more investigation they could have done because this accident was on a country lane, with no road markings or CCTV. There weren't any witnesses, and the damage to the cars could support either driver's account of what happened. In these circumstances, I don't think it's unreasonable that Tradewise said a fair outcome would be for both drivers to share the blame for what happened.

Mr M also complained that Tradewise still hadn't dealt with this claim when he renewed his policy in March 2016, so it affected his premium. Mr M's policy says '*in the event of a claim all [no claims] discounts will be disallowed*'. Tradewise explained to Mr M they couldn't take action against the other driver because there hadn't been any outlay under Mr M's policy. So this caused a delay in settling this claim because Tradewise had to wait for the other driver's

insurer to take action before they could close the claim. So I don't agree that Tradewise handled this claim poorly or treated Mr M unfairly.

Mr M also complained that Tradewise said he couldn't claim for damage to his car because his cover at the time was third party fire and theft, but he had comprehensive cover. I checked his schedule and he did have comprehensive cover at the time of this accident, so I agree he should be able to claim for his loss if he chooses. Tradewise have accepted this was an error, and Mr M can claim subject to his policy excess if he wants to.

second claim – January 2016

Mr M lent a car that was insured on his policy to a friend. This friend didn't have insurance cover – though he'd told Mr M he did – so Tradewise had to deal with the claim from the other driver because they insured the car. This is in line with their legal obligations, so I don't think this was unfair.

Mr M says they should have investigated this claim further, and as his insurer, they should have defended him rather than settling the other driver's claim. And they shouldn't have settled a claim that wasn't his fault. This accident happened in early January 2016. It also happened on a country road, with no independent witnesses or CCTV available. And both driver's said the other driver was fully to blame. Tradewise spoke to Mr M's friend about what happened, and then sent letters to him and Mr M asking for a written statement and photos of the damage to his car. But Mr M's friend didn't provide them with any further information or contact Tradewise. And Mr M sent the ARF and photos to Tradewise in May, five months after the accident.

Tradewise have explained they couldn't hold the claim open indefinitely. And they asked for this information several times since the accident but didn't receive it. So they had to deal with the claim. And I think this was reasonable as Mr M and his friend hadn't sent them information to support their account of what happened. So I don't think there was much further they could have done without the information they'd asked for from Mr M, and photos of the damage to his car.

Mr M also said the other car didn't have much damage on it, and Tradewise shouldn't have paid so much for the repairs. As I've said above, Tradewise had to deal with the other driver's claim, and without the evidence from Mr M and his friend to support their account of the accident, I don't think it was unreasonable that Tradewise paid for the other driver's repairs, based on the engineering report they provided.

Mr M says he shouldn't have to pay Tradewise for the money they've paid out. Mr M says this is unfair and they should ask his friend to pay it, and he had comprehensive insurance. I accept that this is a difficult situation for Mr M, and his friend told him he'd dealt with the other driver's repairs but he hadn't. Tradewise have asked Mr M's friend to pay this, but he didn't respond and hasn't been in touch with them. Mr M had a responsibility to make sure his friend was insured to drive his car before he lent it to him, and Tradewise do have a right to recover the money from Mr M, even though Mr M had comprehensive insurance. This is because his friend wasn't insured to drive on his policy. So I don't agree this is unreasonable.

So – in summary – I don't think Tradewise have treated Mr M unfairly or provided poor service in dealing with these claims. But I agree they made an error saying he only had third party fire and theft cover on his policy in May 2015 so he couldn't claim for his own damage.

I think they should write to Mr M and apologise for their mistake. They should confirm that he had comprehensive cover in May 2015 so can make a claim under his policy for losses because of this accident if he chooses, subject to the terms and conditions of his policy and his policy excess.

my final decision

For the reasons I've set out above, my final decision is that I uphold this complaint in part. I require Tradewise Insurance Company Limited to write to Mr M and apologise for their error in saying he only had third party fire and theft cover on his policy in May 2015. They should confirm to him that he did have comprehensive cover in May 2015 so can make a claim under his policy for losses because of this accident if he chooses, subject to the terms and conditions of his policy and his policy excess.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 December 2016.

Mary Dowell-Jones
ombudsman