

complaint

Mr A trading as 'K' has complained that Tradewise Insurance Company Limited didn't pay a claim he made under his motor trade insurance policy.

background

Mr A had a motor trade policy with Tradewise, which he bought through a broker. In January 2018 his recovery vehicle caught fire while he was driving it uphill in snowy conditions. So he made a claim on his insurance.

Tradewise didn't pay Mr A's claim because his vehicle had been modified. It said under the policy terms this meant it was covered for third party risks only.

Mr A asked us to look at his complaint. Our adjudicator didn't think Tradewise had acted fairly. Tradewise disagrees and so Mr A's complaint 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've decided to uphold Mr A's complaint. I'll explain why.

Mr A's policy says his vehicle is only covered for third party risks if it has been modified. "Modified" isn't defined in the policy. The policy also says liability for loss or damage caused by fire to Mr A's vehicle is excluded if it's been modified.

Tradewise says Mr A's vehicle hadn't been re-registered as a recovery vehicle by the DVLA at the time he added it to his insurance. It says this meant it had been customised or modified, as its description didn't match the vehicle that was registered. And it says this would've been evident to Mr A, because this was a commercial policy and he would've had knowledge of these vehicles and what was required by the DVLA.

Mr A says he's been doing business with Tradewise for nine years. He also says it was aware the vehicle was a recovery vehicle and would've known it had been modified but didn't mention the reduced cover. I've seen an email from the broker through whom Mr A bought the policy saying he advised them it was a recovery truck. I can also see Mr A's declared occupation on the schedule of insurance, which is also endorsed for breakdown recovery, is shown as accident/breakdown recovery.

The V5 log book shows the vehicle wasn't a recovery vehicle from new – I understand it was a panel van. But by the time Mr A bought it (he wasn't the first owner), it was a recovery vehicle. So there's no dispute the vehicle was changed.

It's clear from what Mr A has told us he knew the vehicle had been modified. But it seems he answered 'no' to the following question on a Statement of Fact we've been sent by Tradewise:

"Do you handle or own one of the following: kit built vehicles; vehicles that have been customised, modified or supercharged; any Ford Cosworth models; vehicles over 25 years old from date of manufacture; Q-Plated vehicles?"

Because this was a commercial motor trade insurance policy, Mr A had a duty to make a fair presentation to Tradewise of the risk it was taking on. So he had to tell it anything he knew or should have known that might influence its decision to offer full cover.

Although it seems Mr A answered “no” to the question about modifications in the Statement, I don’t know when or how he was asked the question or, indeed, how the Statement was generated. And, from what Mr A says, I’m not sure he would’ve understood, from the way the question was phrased, that he needed to tell Tradewise about modifications he clearly thought were standard for the vehicle he was insuring and used as part of his breakdown recovery business – and that he believed Tradewise would’ve known about given his history of buying its commercial insurance. And Mr A did tell his broker the vehicle was a recovery vehicle when he added it to the policy. Tradewise offers full cover to recovery vehicles and Mr A’s schedule of insurance is endorsed to this effect. So I don’t think there’s a material difference in the risk it took on by insuring a recovery vehicle to one that was once used as a panel van. So I don’t think Tradewise has acted fairly and reasonably in turning down Mr A’s claim.

As a final point, I should mention there’s some uncertainty about the legal ownership of the vehicle at the time of the incident. I’ve seen an invoice showing Mr A bought it in July 2016. But his V5 log book (which I understand was issued by the DVLA on 27 February 2018, more than a month after the incident) shows him acquiring it on 2 January 2018. Mr A says he can clear up any confusion about the ownership. But, if he can’t establish he was the legal owner of the vehicle at the time of the incident, he should know he will have no insurable interest in it and so Tradewise won’t be under any duty to deal with the claim.

my final decision

Subject to Mr A providing proof of ownership of the insured vehicle, I uphold his complaint and direct Tradewise Insurance Company Limited to process his claim for the January 2018 incident under the terms of the policy on the basis he had fully comprehensive cover. And, if he still has the vehicle insured with it, Tradewise Insurance Company Limited should continue cover on it on a fully comprehensive basis.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A trading as “K” to accept or reject my decision before 21 July 2019.

Jane Gallacher
ombudsman