

complaint

Mrs and Mr J complain that One Insurance Limited (One) hasn't paid them the market value of their Lexus after it was written off in an accident in July 2014.

background

Mrs and Mr J bought the car which is the subject of this complaint in 2013, transferring their personalised number plate from their previous vehicle to the new Lexus. In May 2014 Mr J went on to a price comparison site to look for the best deal for their car insurance. He obtained two quotes. The one from One was about £150 cheaper than the other so they decided to insure the Lexus through One.

The policy contained a condition which said that if the car was a total loss One would pay either the market value or the amount given as the value when the policy was taken out, whichever was the lower. Mrs and Mr J's policy documents wrongly stated the value of car as £23,000 when in fact it was worth over £40,000. One refused to pay more than the amount stated in the policy documents, so Mrs and Mr J brought their complaint to us. In its response to us, One suggested that Mr J had deliberately underestimated the value of the car in order to get a lower premium.

The adjudicator recommended that the complaint should be upheld. He said that the term restricting the amount paid out to the valuation given by the proposer at the beginning, if it was less than the market value, wasn't fair. He rejected One's argument that Mr J had deliberately undervalued the car in order to get a lower premium. He said that this was a serious allegation to make. If One thought Mr J was guilty of fraud it should have said so when it replied to his complaint. The adjudicator also rejected the allegation of fraud on the basis of the evidence he had seen. He recommended that One should pay Mrs and Mr J the balance between the real market value of the car, which he calculated was £42,400, and the incorrect valuation on the policy documents, along with interest of 8% a year. He also thought One should pay Mrs and Mr J £250 for the trouble and upset they had suffered, including the inconvenience of being without a car for longer than they otherwise would have been.

One didn't accept any of these recommendations. It insisted there was evidence of fraud by Mr J. It asked for the case to be reviewed by an ombudsman.

my findings

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

I agree with the adjudicator that if One was refusing to pay the full claim because it suspected fraud, it should have told Mrs and Mr J so at the time they made the original complaint. However the reality of the situation is that the allegation has been considered in some detail by the adjudicator and I also intend to deal with this aspect of the case. The argument is that in order to obtain a lower quote, Mr J deliberately undervalued the car he was insuring by £20,000. According to One he further perpetrated this deception by changing the description of his work from 'Assistant Manager' for a Housing Association to 'Property Manager' working in 'Property Services'. It is not clear to me how this would have resulted in a lower premium but, in any event, it seems to me that Mr J's role is covered by either description. I don't accept this as evidence of fraud.

It is certainly true that the information about the vehicle entered on the price comparison website that triggered the quote from One that Mr J accepted is wrong. It includes the correct personalised registration number but says that the car was registered in 2010 and that it has a value of £23,190. In other words it appears to relate to Mrs and Mr J's previous vehicle. This is to be contrasted with the information provided for the other quote which again incorrectly states the car was registered in 2010 but has a value of £40,000.

I consider it inherently unlikely that Mrs and Mr J should have undervalued their car by £20,000 in order to save £150 on their car insurance. They were in the fortunate position of being able to afford the Lexus in the first place. I think it's unlikely they would have been willing to take the risk of the car not being fully insured when they could afford to pay the full cost of the insurance.

The details that showed up on the screen shot exactly matched those of their previous vehicle. Both vehicles had the same registration number because of Mrs and Mr J had a personalised number plate. I agree with the adjudicator that the most likely explanation for what happened is that, when Mr J entered the registration number, the form was automatically populated with the details of Mrs and Mr J's previous car. This appears to have happened with both quotes since they both have the registration year as 2010. It may be that the first time Mr J noticed the undervalue and corrected it but didn't notice it the second time round. In any event I am satisfied, on the balance of probabilities, that the information about the previous car was not provided by Mrs or Mr J with the deliberate intention of obtaining a lower quote for their car insurance. I have no hesitation in rejecting the allegation of fraud.

My finding on this point is reinforced by the fact that when Mrs and Mr J received the policy documents they noticed the undervalue and raised it with One in an email dated 16 May 2014. The email says:

To Whom it May Concern,

My details were correctly filled in via the (price comparison) website, as another vehicle was also insured at the same time and this happened without any problem.

Therefore I am confused as to why this vehicle did not proceed in the same manner?

Additionally I called but often received an engaged tone and when I got through yesterday afternoon I spoke to Shannon @ 17:04 and was told that the systems are down and I should call tomorrow. Having called several times today I again receive an engaged tone.

However please find the attached documents as requested and advise accordingly.

The documents attached are insurance document with the incorrect value and other errors marked up.

One accepts it received this email but says there were no attachments. It says this reinforces its argument that Mr J acted fraudulently. I don't agree. The wording of the email is consistent with Mr and/or Mrs J noticing the policy schedule contained incorrect information and asking what they should do about it. If there weren't any attachments (and the copy Mr J has produced shows that there were two) I would have expected One to follow this up. I consider this email is important evidence that confirms the incorrect information was entered by mistake and not because of any intention by Mrs or Mr J to mislead.

One hasn't challenged the adjudicator's finding that the condition restricting payment to the valuation provided by the proposer, if it's less than the market value, is unfair. Its case has been that Mrs and Mr J are not entitled to the full value of their car because they provided

false information on the website. But I have considered this aspect of the case as part of my review. As the adjudicator has explained, a policy holder would normally expect to receive the full market value of his or her vehicle. So a term that allows an insurer to pay less than market value is unusual and onerous. This is particularly true when the lower payment is based on a valuation provided by the policy holder who won't necessarily know its value. We would expect the insurer to flag up this restriction clearly in order to make sure that its policy holders understand the importance of providing an accurate figure.

In this case there was nothing to alert Mrs and Mr J to the significance of the valuation stated on the policy schedule. So I don't think it's fair for One to rely on this condition. It follows that Mrs and Mr J are entitled to the market value of their car. One hasn't challenged the adjudicator's valuation for the Lexus of £42,400. It should now pay Mrs and Mr J £19,210 with 8% interest.

One does challenge the £250 the adjudicator recommended for trouble and upset. This included £150 for the inconvenience of not having the car. One says Mrs and Mr J should have to produce receipts to prove this loss. The award isn't intended to compensate Mrs and Mr J for the cost of making alternative travel arrangements but the inconvenience of having to do so. The other £100 is to compensate Mrs and Mr J for the stress of finding that they still owed £20,000 to the finance company. I consider the total payment of £250 is fair and reasonable and in line with the awards this service makes.

my final decision

I uphold the complaint. I order One Insurance Limited to pay Mrs and Mr J:

- £19,210 in final settlement of their claim;
- Simple interest of 8% a year from 9 July 2014 until settlement of their claim;
- £250 for the trouble and upset they have suffered.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs and Mr J to accept or reject my decision before 28 August 2015.

Melanie McDonald
ombudsman