

complaint and background

Mr A complains that Tradewise Insurance Company Limited (“Tradewise”) has unfairly declined a claim he made on his motor insurance. He’d like them to cover the claim.

I’ve attached my provisional decision from June 2017, which forms part of this final decision. In my provisional decision I set out the reasons why I was planning to uphold this complaint. In short, that was because I thought Tradewise had failed to evidence that it had fairly declined Mr A’s claim.

I asked both parties to come back to me with any further evidence or comments before I reached a final decision. Mr A provided some more detail about the damage to this car. Tradewise responded with some queries about the service history of the vehicle and some speculations about what might have caused the engine to fail.

my findings

I’ve reconsidered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. Having done so, I’m upholding this complaint.

In my provisional decision, I explained that the available evidence suggested that it was the theft of this vehicle that caused the damage in question. In response, Tradewise has hypothesised about other potential causes linked to what it says are known issues with this particular model of car. It says the only way to actually know the cause of the engine seizing would be to dismantle it – an action it chose not to take when assessing Mr A’s claim.

It has also suggested that the onus ought to be on Mr A to provide the car’s service history in order to support his stance that it had been well maintained. I note that Mr A has already informed Tradewise some months ago that he does not have the full service history, and has provided what information he has. He also previously explained the maintenance he himself had carried out on the car.

Overall, Tradewise’s submissions don’t alter my view on this case. It has continued to be unable to provide any robust evidence to show that the damage to this car wasn’t caused by the theft. It follows that I uphold this complaint and Tradewise must now reassess Mr A’s claim on that basis.

my final decision

For the reasons explained, I uphold this complaint and direct Tradewise Insurance Company Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 17 August 2017.

Siobhan McBride
ombudsman

copy of provisional decision

complaint

Mr A complains that Tradewise Insurance Company Limited ("Tradewise") has unfairly declined a claim he made on his motor insurance. He'd like them to cover the claim.

background

In April 2015 Mr A took out a motor trade policy with Tradewise. Following the theft of one of his cars in March 2016 Mr A made a claim under the policy for damage. This included the engine of the car, which was found to have seized.

There were initially some disputes about whether the keys to the car had been kept securely enough, but those have been resolved. The main point of dispute now concerns what damage was caused to the car, and that is what this decision will deal with.

Tradewise said that the theft of the car wasn't the cause of the engine seizing, so declined to cover that damage, which would put the vehicle beyond repair so it would need to be written off. Mr A complained first to Tradewise about this, and then to this service. The investigator thought that Tradewise's decision not to cover the damage was fair, and so didn't uphold Mr A's complaint. He doesn't accept that and has asked an ombudsman to look at the case.

Since making that request, the car has been returned to Mr A by the garage that was storing it. Unfortunately, Mr A has contacted this service to tell us that the car now has more external damage, and also significant interior mould that wasn't present when it was taken by the garage to be assessed for the claim. Pending the outcome of this decision, Tradewise hasn't commented on this issue.

my provisional findings

I've considered all the available evidence and arguments to provisionally decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm planning to uphold this complaint and I'll explain why.

The account of what happened in February 2016 is made up of Mr A's testimony and police records. That account overall suggests that the car was found abandoned by police within about half an hour of it being stolen. Tradewise's position is that the engine must have had an underlying fault for it to have seized in such a short period of time. So, it asserts that the fact the car was being driven by thieves when the engine seized is effectively coincidental. As wear and tear wouldn't be covered by the policy, it declined to cover this.

In Section 2 of the policy document, it's set out that Mr A will be covered for:

"(3) *Theft*
Loss or damage caused by Theft or Burglary or any attempt thereat."

Tradewise's engineers have said that the thieves couldn't have done something inside of half an hour that would actually cause the engine to seize. It says:

*"...there **could** have been an underlying problem with the engine...There is no evidence that the actions of the thieves have caused the engine to seize/fail and it's something that **may** have happened regardless of who was driving it."*

(my emphasis)

But Tradewise's engineers also haven't been able to offer any evidence of an existing problem or weakness in the engine which meant that it was destined to seize regardless of who was driving. I accept that is possible, but have to consider whether it can be said to be most likely.

What is known about this incident and the thieves suggests that whoever was driving may not have had a licence or been an experienced driver. Although it didn't travel far, the car was found on the side of a motorway and may have been driven badly at high speed. All in all, no one can know what happened to the car in that timeframe, or how it was treated whilst in the thieves' hands. And as Tradewise's experts haven't been able to pinpoint an existing problem with the engine that led to its failure, I'm not persuaded the evidence supports Tradewise's view that the thieves' driving in this instance was coincidence, and not cause.

Tradewise has also highlighted that mechanical breakdown isn't covered under the policy. So, ultimately, it says the cause of the engine failure is immaterial. It has confirmed the relevant policy term which sets this exclusion out.

But my remit is to consider what is fair and reasonable in any given situation – not simply what particular policy terms may say in isolation. Having weighed up all the available information, on balance, I think that Mr A's car was damaged by thieves. And so I am planning to direct Tradewise to re-assess the claim on that basis.

my provisional decision

For the reasons I've explained, I'm currently planning to uphold this complaint and to direct Tradewise Insurance Company Limited to re-assess Mr A's claim on the basis described above.

Both Mr A and Tradewise have until 4 July 2017 to let me have anything else they'd like me to consider before I reach a final decision.

Siobhan McBride
ombudsman