complaint

Mr H complains that The Equine and Livestock Insurance Company Limited ("E & L") unreasonably rejected a claim he made on his caravan motor insurance policy.

background

Mr H was towing his fully-laden caravan back from holiday when it crashed into a motorway central reservation and was written-off. He says E & L did not collect it from the recovery agent's premises quickly enough, so E & L should be responsible for storage charges and for stolen items. E & L rejected the claim because it considered the car Mr H had used to tow the caravan was not satisfactory for the task and that Mr H had failed to take reasonable care or follow the manufacturer's recommendations; the car's maximum towing weight was 1600 kilograms and the unladen weight of the caravan was 1610 kilograms. It calculated the weight of Mr H's *laden* caravan to be at least 1752 kilograms. Mr H considered the accident was due to a tyre blow out and says he was advised of that by police officers at the time.

Our adjudicator upheld the complaint. In her view, Mr H was not reckless and an average consumer would have considered his car suitable to tow the caravan safely. She considered it unreasonable for E & L to have expected Mr H to know what the manufacturer's recommendations were, especially as the requirement was not highlighted in the policy documents. She considered that E & L should pay the claim and the storage charges as well as agreeing to deal with any third party claims arising from the accident.

E & L did not agree with the adjudicator's view. It considers that Mr H had a duty to ensure his car was suitable for towing the caravan's weight. It agreed to pay the storage charges as a gesture of goodwill (and has done so) but said that third party claims were a matter for its commercial judgement. As there was no agreement, the complaint was passed to me for review.

my findings

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

Whilst I appreciate that Mr H may have been advised by police officers at the scene that a blow-out was the likely cause of the accident, there is no actual evidence that it was, and when the loss adjusters checked, they could see no sign of it. It therefore does seem more likely than not that the weight of the laden caravan, and the under-capacity of the towing vehicle, was the cause or a contributing cause of the accident.

Mr H says he was not aware of the manufacturer's recommendations about towing weights and considered his large, heavy car to be suitable for towing, which it was, and he had already towed the caravan with it successfully once. E & L says Mr H would have been advised when he purchased the caravan about safety requirements, including towing recommendations, but Mr H says he bought it from a private seller and does not recall any conversation about the issue. There is no evidence that he ignored important advice and I consider it unlikely he would have done so, given that the safety of his family was at stake.

In my view, Mr H did not act recklessly, as there is no evidence that he was aware of a risk and courted it, or took no steps to avert it. In my view it was not unreasonable for him to consider the car suitable for towing the caravan.

I note that, unladen, its weight was around the manufacturers recommended limit, but even at the estimated weight when it was fully-laden, it was less than 10% above it. In my view, an average consumer would have concluded it was safe to drive the laden caravan, as Mr H did, and I note that the police who attended the scene of the accident apparently raised no concerns.

E & L also says that the manufacturer's recommendation was referred to in the policy and it was unreasonable for Mr H to have ignored it. Although the policy does set out an exclusion for losses caused where a policy holder has not complied with the manufacturer's regulations, in my view the wording used by E & L in the policy is general rather than specific. Placing the exclusion at the end of the document (with no form of emphasis) means that the term was not sufficiently explained or highlighted. I consider that many consumers would have skimmed over the wording and would not have fully appreciated what it meant.

E & L says that we cannot require it to pay third party claims and that these would only be considered if Mr H could be shown to have been negligent, which we say he was not. In my opinion, negligence does not have to be shown for the policy to cover third party costs, although I agree that E & L would be entitled to use its commercial discretion and deal only with claims that are valid and reasonable.

I am satisfied that Mr H has experienced the worry and inconvenience of having to deal with this matter over a lengthy period and that he also lost the use of the caravan for some of that time. In my view, the global sum suggested in compensation by the adjudicator was fair.

my final decision

My final decision is that I uphold this complaint. I require the Equine and Livestock Insurance Company Limited to do the following:

- Pay Mr H the market value for the caravan and contents
- Add interest at 8% simple per annum from the date of claim to the date of payment
- Pay Mr H for the stolen personal items, plus interest at 8% simple per annum, from the date of claim to the date of payment
- Pay Mr H £350 compensation, to include loss of use of the caravan
- Deal with any valid third party claims arising from the incident

Under the rules of the Financial Ombudsman Service, I am required to ask Mr H to accept or reject my decision before 22 December 2014.

Susan Ewins
ombudsman