

complaint

Mr R has complained that its claim for the theft of a car under the fleet policy was rejected by the insurer as Crosby Insurance (the broker) did not instruct the insurer to add this car to the policy.

background

Mr R argued that he informed Crosby Insurance that the car was to be added to his policy. In support, he provided correspondence from Crosby Insurance to show that it did receive such instructions and allegedly passed this to the insurer.

As a result of it being demonstrated that insurer had not in fact received instructions to add the car from Crosby Insurance, Mr R complained to Crosby Insurance.

Crosby Insurance admitted its error and offered Mr R £7,500 for the value of the car.

Dissatisfied with this offer, Mr R brought his complaint to us.

The complaint was considered by the adjudicator, who had also looked at a previous complaint Mr R had had against the insurer. Consequently he was familiar with the circumstances of the original claim itself, as another issue that the insurer had raised was whether Mr R had demonstrated that some rectification work had been carried out on the vehicle prior to its purchase. The vehicle had previously been declared a total loss prior to its purchase by Mr R.

The adjudicator was of the opinion that Crosby Insurance's offer for the market value of the car was too low and needed to be increased. Initially he concluded that Crosby Insurance should increase its offer to £21,350, and pay interest at 8% simple per annum from one calendar month after Mr R's loss to the date of settlement. It should also pay him £150 for any inconvenience he may have been caused.

Crosby Insurance disagreed and pointed that there was a policy limit of £20,000 on Mr R's policy and there was an excess payable of 10% of this which should apply. Therefore the most it would have to pay Mr R was £18,000.

Crosby Insurance was also unhappy that the same adjudicator dealt with both this complaint and Mr R's complaint against the insurer as that would mean this adjudicator was then biased and lacked independence.

Crosby Insurance was also unhappy that the adjudicator was of the view that it should pay interest of 8% over a time period where it had no control over the initial complaint against the insurer and indeed the time the complaint has been with this service.

Crosby Insurance referred to the inadequate recording keeping of Mr R to show the purchase and repair invoices for the vehicle, the consequent over reliance by the adjudicator on the validity of the MOT, all of which might affect the actual market of the vehicle.

The adjudicator then revised his recommendation to £18,000, with the previous interest payment and amount for inconvenience.

As no agreement could be reached the complaint was referred to me to consider.

my findings

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

First, I do not accept that it was inappropriate for the same adjudicator to deal with both the complaint Mr R made about the insurer and this complaint. I find that his familiarity with the circumstances of the theft of the vehicle and indeed the stance of the insurer in considering Mr R's initial claim simply ensured this complaint was dealt with more quickly, which aids all parties concerned.

The central issue of this complaint is that Mr R has said he gave instructions to Crosby Insurance to add the vehicle to his policy and that these instructions were not carried out. Consequently as this vehicle was not added to Mr R's policy his insurer could not consider his claim for the loss of the vehicle under its policy.

Crosby Insurance made an offer to Mr R which it regarded was an appropriate market value of the vehicle, which I find is a clear indication that Crosby Insurance believes it did not carry out Mr R's instructions to add this vehicle to his policy. The next issue is whether or not this amount represents the appropriate market valuation for Mr R's vehicle.

Crosby Insurance has raised issues concerning whether or not Mr R has been able to produce documentary evidence of the rectification work that he says was carried out on the vehicle. This includes the authenticity of an invoice supplied, which was considered in Mr R's complaint against the insurer.

The photographs of the vehicle, which were taken after the incident which gave rise to it being a total loss, show that the vehicle had suffered major damage to the front of the vehicle. Mr R has provided an MOT certificate issued on 30 September 2010. This lists the following 'Advisory Items':

- Nearside front Vehicle structure has slight damage.
- Offside front Vehicle structure has slight damage.
- Nearside inner front vehicle structure has slight damage.

Given the extent of the damage in the photographs, I do not consider that an MOT tester would refer to 'slight damage' if the vehicle was in the condition of the photographs at the time of its MOT test. I also can see that there has been confirmation from the DVLA that the MOT is a genuine one.

Therefore I do not find Crosby Insurance's arguments about what repairs had or had not been carried to this vehicle and the lack of documentary evidence to show the extent of the repairs is persuasive. The fact remains the MOT certificate clearly indicates some advisory issues which is also evidence of the full extent of the repair work done on the vehicle following its previous total loss status. The MOT certificate that Mr R has provided is satisfactory evidence that the vehicle was in a roadworthy condition. Given the extent of the damage shown in the photographs from when the vehicle was declared a previous total loss, I find that Mr R has satisfactorily demonstrated that the repairs were carried out to the

vehicle. Therefore I find that any dispute as to who obtained parts, or paid for the repairs to the vehicle is immaterial.

Therefore the remaining issue for me to consider is what the market value of Mr R's vehicle is. Our starting point is to look at all of the various motor trade guides which are available, (Parker's, CAP and Glass's). Once the various guides have been reviewed - taking into account small differences such as the mileage, year of registration, model type etc - consideration will then be given to any other evidence submitted by either party, which may include engineers' reports, dealers' advertised prices (although it should be stressed that these reflect asking rather than selling prices) and any other advertisements, together with any special factors (for example if the vehicle has been significantly modified or adapted).

The trade guides value vehicles in what is described as a clean condition and although they have provided values significantly higher than what Mr R has requested, it has to be taken into consideration that the vehicle was a previous total loss.

Mr R would be entitled to the trade value of the vehicle. Having checked the trade guides, Glass's values the vehicle at £27,450. An additional £525 needs to be added to this in view of the mileage of Mr R's vehicle, making a total figure of £27,975. CAP values the vehicle at £25,400, taking into account the vehicle's mileage at the time of loss.

However as the vehicle was a previous total loss, an insurer would be entitled to make a further reduction of 20% of the vehicle's value. The revised figure is £22,380, for the Glass's value and £20,320 for the CAP value.

As Crosby Insurance has pointed out there is a policy indemnity limit of £20,000 and an excess of 10% can be charged for the claim. So I find that the appropriate value for Mr R's vehicle, taking into account the policy limitation which would have applied had the vehicle been added to the policy is £18,000.

Crosby Insurance has disputed it should pay interest of 8% from one calendar month from the date of the theft – 3 March 2011 to the date of payment as the insurer had not completed its investigations into the theft until the end of October 2011 and that therefore interest should only run from October 2011. It also disputes paying interest for the period of time from October 2011 to November 2012 as this was the duration of Mr R's complaint against the insurer and there was no indication of Mr R complaining against it until after that time.

However I find that interest of 8% simple should be awarded from 3 March 2011 to the date of payment as if Crosby Insurance has placed this vehicle on cover, it is likely that Mr R would have received payment of its market value by that time. The interest payment is not a penalty against a business; it is the normal judgement rate of interest aimed to compensate the consumer for his loss of the payment at a time when it was likely to have to been paid to him.

Clearly this whole issue has caused Mr R some significant inconvenience and therefore I find Crosby Insurance should pay Mr R the sum of £150 compensation for the inconvenience it has caused him.

my final decision

For the reasons above it is my final decision that I uphold this complaint and I order that Crosby Insurance pay Mr R the following:

- £18,000 representing the market value of his vehicle
- Interest on this amount of 8% simple from the one calendar month after date of loss of the vehicle to the date of settlement.
- £150 for any inconvenience he has been caused.

I make no other order against Crosby Insurance.

Rona Doyle
ombudsman