complaint

Mrs W complains about the settlement of her motor insurance claim by Acromas Insurance Company Limited following a road traffic accident.

background

When Mrs W referred this complaint to the Financial Ombudsman Service, there were a number of aspects to it, including:

- The total-loss valuation of the insured car;
- The withdrawal of a hire car by an unregulated credit-hire company;
- The cancellation of cover and maladministration of the premium refund; and
- A refund of certain police and recovery costs.

Following our adjudicator's involvement, all the above issues have now been resolved with the consent of both parties – so there's no need for me to comment further on them. But there remains one outstanding matter that Mrs W would like reviewed: storage costs.

The adjudicator felt that it was reasonable of Acromas to stop paying storage charges in full after 21 August 2014. This was because, its engineer having concluded by then that the car was a total loss (ie, beyond economical repair), it still offered Mrs W free storage elsewhere whilst her claim was in dispute. However, given that the total-loss offer was later increased on the basis of new expert evidence from Mrs W, Acromas had offered and paid 50% of the storage costs incurred *after* 21 August as a goodwill gesture. In her appeal, Mrs W says:

> I accept your conclusions set out in your letter of 9th November but still feel that I have not been treated fairly in respect of the unpaid portion of the storage fees.
>
> It is now obvious to me that of the two telephone calls I received on 21 August only the former was from C———. They were minutes apart as though they were from the same office and one was a continuation of the other. I therefore assume that there was communication between C——— and [Acromas]. I did not mention ownership of the car in the telephone call which you have listened to as it was a given from the first call what I had to do and this was very distressing. I appreciate that you have no evidence of this but I e-mailed a complaint in on 23 August discussing this. [Acromas] had the opportunity here to correct me as they had also in their apology in January 2014 for not investigating my complaint but they chose not to do so.
>
> The letter from [Acromas] dated 2nd September reiterates the message in the phone call of 21 August which you cannot investigate.
>
> The car will be safe with no charges—see paragraph 'Next Steps'—a secure location free from ongoing charges. Send in section 9 to DVLA—to C Ltd this will make sure that DVLA know what is going on with your car and that you are no longer the keeper.
>
> Yes the car would be safe but from me not for me.
>
> The options I had therefore were either to pay storage fees or transfer my car to C and no longer be the keeper of it. I would therefore like this portion of the complaint to be reviewed as the final stage in the complaints process.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There appears to have been some confusion at the time about which company initially called Mrs W about the storage. She had opted to use the services of an unregulated credit-hire company, which would hire a car to her whilst hers was indisposed and then seek recovery of these costs from the third party through legal action. But unlike FCA-authorised insurers,[1] we have no jurisdiction over credit-hire companies because they're not carrying out any regulated or other activity covered by the Financial Ombudsman Service (whose jurisdiction is more limited than the courts'). That's why we're unable to consider the acts or omissions of the credit-hirer.

As the adjudicator explained, Acromas did in fact make clear in *its* call to Mrs W that the car could be safely stored for free locally. There was no coercion or risk of Mrs W losing ownership. It was simply a pragmatic option consistent with her common-law duty to mitigate her losses (because even those liable for negligence aren't expected to pay limitless damages). I'm satisfied that Acromas's representative explained the situation clearly enough over the phone. She said (amongst other things):

Representative:	Nothing is going to happen to your car. Because the garage is charging storage charges, we need to take it to a place of free storage because we are not going to be covering any storage charges.
Mrs W:	Right, so where is it going to go after that?
Representative:	It will go to a company called C——. It will be a local one to where you are. Whilst we are dealing with the claim, nothing will happen.

The conversation continued further in this vein, with the representative clearly explaining the process in layman's terms and why it was necessary (ie, mitigation of loss for the third-party claim). There was no indication from Acromas that Mrs W would lose possession whilst she was still disputing the market value of the car and/or whether it was in fact economically repairable. In the circumstances, I agree with the adjudicator that the offer of free storage was a fair one. I don't think it was reasonable of Mrs W to refuse the offer (though I appreciate that she was probably confused and worried because of the credit-hirer's involvement). So, it follows that I think the goodwill payment of 50% of the costs after 21 August was fair and reasonable.

my final decision

For the reasons set out above, I'm unable to increase the settlement offer mediated by the adjudicator. So, to conclude, I only partially uphold the complaint; and therefore direct Acromas Insurance Company Limited to settle the matter as already agreed in favour of Mrs W, namely:

- Pay £150 compensation in total for distress and inconvenience caused by the premium refund maladministration;

[1] In other words, insurers that are authorised and regulated by the Financial Conduct Authority under the Financial Services and Markets Act 2000.

- Pay interest at the simple rate of 8% per year on the premium refund from the date of cancellation until the date of refund;
- Pay for Mrs W's independent expert valuation report (on reasonable proof of payment) plus interest at the simple rate of 8% per year from the date of payment to the date of settlement;
- Pay for the storage costs until 21 August 2014 (on reasonable proof of payment) in addition to the 50% payment already made, together with interest at the simple rate of 8% per year from the date of payment to the actual date of settlement; and
- Pay for the police compound fee plus recovery costs (on reasonable proof of payment) plus interest at the simple rate of 8% per year from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before **5 February 2016**.

For the avoidance of doubt, I must point out that if Mrs W doesn't accept this decision, the offer it contains won't be binding on Acromas – but she will remain free to take legal action against it over this matter. By contrast, if she does accept, the offer will be binding on both parties – and that means she wouldn't later be able to sue Acromas over those aspects of the complaint that we haven't upheld in full or at all.

Mark Sceeny
ombudsman