

complaint

Mr N has complained about the settlement by Mapfre Asistencia, Compania Internacional de Seguros y Reaseguros, SA ("Mapfre") of his claim under a Guaranteed Asset Protection (GAP) insurance policy, saying that its payment was insufficient to enable him to meet the cost of replacing his car, contrary to what he was told when he paid for the policy.

background

In January 2010, Mr N purchased a new car and a GAP "Purchase Protection" insurance policy to cover his loss if the car were written off. He made a claim in 2013, which Mapfre settled. It paid Mr N £2,830, stating that it was not liable for a number of amounts listed on the invoice. It relied on the policy definition of "net invoice price":

"'Net Invoice Price' means the price paid by the Insured for the Insured Vehicle including all factory- or dealer-fitted options specified in the Insured Vehicle's manufacturers price list, and any discount given but excluding the price paid for accessories and extras, road fund licence, new vehicle registration fee, fuel, paintwork and upholstery protection kits, insurance or warranty premiums (including the premium for this policy) and any Negative Equity."

An adjudicator considered Mr N's complaint. He considered the policy wording was ambiguous. Whilst he agrees with some of the deductions Mapfre made, he concluded that it had not paid Mr N the full amount it should have done. He recommended that Mapfre recalculate the settlement and make an additional payment to Mr N, plus interest and £150 compensation for poor claims handling.

Mapfre did not agree with the adjudicator. It asserted that his recommendations would place Mr N in a position of betterment, which was against the basic principle of indemnity.

my findings

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

The issue for me to determine is whether Mapfre settled Mr N's claim properly.

I consider it important that the policy is headed "Purchase Protection Policy". I am satisfied that Mr N was led to believe that he would receive a settlement which (in addition to the motor insurer's payment) would enable him to replace the car.

The Summary of Cover states that "This policy will cover you for the difference between the net invoice price and the insured value ... up to the new invoice price of your insured vehicle". It does not define these terms (the definitions are contained in the full policy document and it does not mention the exclusion of a discount in the Significant Features and Benefits section of the policy summary).

The main area in dispute is Mapfre's exclusion from the amount claimed of the discount of £4,254.04 which Mr N received as a result of paying for his new car in cash. It is clear that this was an individually negotiated discount and might not be available in connection with a new transaction. Mr N stated that he understood the exclusion to mean that the policy covered him for the full invoice price.

The definition states: "... *including ... any discount given*" and therefore I consider Mr N's belief was reasonable in the circumstances, particularly as the exclusion goes on to state what is "*excluded*".

Mapfre has asserted that the policy terms are clear, but I agree with the adjudicator that the definition of "Net Invoice Price" is capable of more than one interpretation and is therefore ambiguous.

It is a well-established principle of contract law that the consumer is entitled to the more favourable interpretation if a term is ambiguous. In my judgment, Mapfre was not justified in excluding the discount when it calculated the settlement of Mr N's claim.

Mr N has accepted the deductions for fuel, the registration fee, the road fund licence and the GAP insurance premium were properly made in accordance with the terms of the policy.

I agree with the adjudicator that Mapfre was not entitled to make deductions for delivery of the car or for the leather seats. However, the deductions for the number plates (FOC), fuel (FOC), first registration fee (£55), VED 12 months Diesel K (£215), GARDX (£300), textile mats (£70) and the GAP insurance premium (£300) were justified under the policy terms.

my final decision

It is my final decision that Mapfre Asistencia, Compania Internacional de Seguros y Reaseguros, SA did not calculate the settlement of Mr N's claim correctly.

I require Mapfre Asistencia, Compania Internacional de Seguros y Reaseguros, SA to pay Mr N the following amounts:

- the discount (£4,254.04);
- the cost of delivery (£600.44); and
- the cost of the leather seats (£521.10).

I also require Mapfre Asistencia, Compania Internacional de Seguros y Reaseguros, SA to add interest to the settlement, calculated at the gross annual rate of 8% simple from the date of the claim until settlement is made.

I further require Mapfre Asistencia, Compania Internacional de Seguros y Reaseguros, SA to pay Mr N £150 compensation for distress and inconvenience due to its poor handling of the claim.

Finally and for the sake of clarity, there is no evidence that Mapfre Asistencia, Compania Internacional de Seguros y Reaseguros, SA issued its settlement cheque to Mr N. if it did not, it should make this payment of £2,830 without delay and add interest calculated at the rate specified above.

I make no other award against Mapfre Asistencia, Compania Internacional de Seguros y Reaseguros, SA.

Reidy Flynn
ombudsman