complaint

Mr T complains that Aviva Insurance Limited did not pay his claim under a motor insurance policy.

background

Mr T had a vehicle which was damaged in an accident which was not his fault. He took it to a repair garage but took it away before it was repaired. He later took it to another garage. But, instead of having the vehicle repaired, Mr T says he sold it to his wife for £1,500. He complained when Aviva did not pay his claim.

The adjudicator recommended that the complaint should be upheld. He concluded that Mr T had a market value policy and his vehicle did qualify to be classed as a total loss. He recommended that Aviva should pay Mr T:

1. the market value of his vehicle (less the £1,500 he had already received for it);

2. £200 for the parts he had to pay for;

3. 8% simple interest on these amounts from the date of payment to the date of settlement;

4. £150 for inconvenience.

Aviva disagrees with the adjudicator's opinion. It says the vehicle had structural damage. It also says that Mr T lost his insurable interest when he sold the unrepaired vehicle.

my findings

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

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I have seen a vehicle order form by which Mr T agreed to buy the vehicle for £9,900. From the registration document (V5) I see that this was in December 2008.

Like most motor policies, Aviva's policy said that – in the event of loss or damage to the vehicle - it had the options to pay for it to be repaired or to pay cash for the amount of loss or damage. I consider that Aviva should exercise its options within the bounds of reasonableness. I take into account the widespread practice of writing off a vehicle as beyond economic repair if the estimated cost of repair exceeds about 60% of its value.

Mr T's vehicle was badly damaged on 23 November 2011 in an accident caused by a third party. Within a week Aviva wrote to Mr T saying that the third party had accepted liability.

The following month, the first repair garage inspected the vehicle. It noted a recorded mileage of about 75,400. The garage produced an estimate for repairs of about £5,600 including VAT. It noted that Aviva had authorised repairs.

I find this surprising. The trade guides suggest that such a vehicle was worth no more than about £6,500 before the accident. In view of the cost of repairs, I would have expected Aviva to write it off. I bear in mind also that the third party had admitted liability and Mr T had made it clear that he wanted a cash settlement.

Mr T took the vehicle away without having it repaired. Aviva says that it paid the garage about £200 for parts it had ordered. Mr T was under the impression that Aviva would send him a cheque. From his letter in about January 2012 I note that he was concerned that Aviva would hold him responsible for the £200. But on balance, I am not persuaded that Mr T paid it.

In March 2012 he took the vehicle to a second garage. It produced an estimate for repairs of about £4,600 including VAT.

From the V5, I see that Mr T's wife acquired the vehicle at about the same time. I have seen a signed statement in which his wife says she paid him £1,500. I note that this was roughly the difference between the pre-accident value of the vehicle and the second estimate of repairs.

Mr T's wife's signed statement says that she got the vehicle repaired shortly afterwards at a cost of about £2,500. I find this consistent with an MOT test certificate in early March 2012, recording the mileage as about 75,500.

I note that Aviva insured Mr T's wife. A few months later someone vandalised the vehicle. I have seen a letter from Aviva to Mr T's wife saying that it had settled her claim based on a value of £5,925.

Regardless of what Aviva paid Mr T's wife, I consider that it is fair and reasonable to order Aviva to put Mr T in the position he would have been in if it had declared his vehicle beyond economic repair in December 2012 and he had chosen to keep the unrepaired vehicle as salvage.

Mr T wanted cash rather than a repaired vehicle. And I have seen his order for a different sort of vehicle in December 2012. Therefore I do not consider it fair and reasonable to hold Aviva responsible for his loss of use of the damaged vehicle.

But – from their statements – I accept that Aviva's response to the insurance claim was a source of tension between Mr T and his wife at an already difficult time in their relationship. I consider that £175 is fair and reasonable compensation for the distress and inconvenience Aviva caused.

my final decision

For the reasons I have explained, my final decision is that I uphold this complaint in part.

I order Aviva Insurance Limited to pay Mr T:

1. the market value of his vehicle immediately before it was damaged in November 2011 (less a deduction for salvage not to exceed £1,500);

2. simple interest on the net amount it pays under paragraph 1 above at the annual rate of 8% from 23 November 2011 to the date it pays him. If it considers it has to deduct tax from the interest element of my award, it shall send Mr T a tax deduction certificate when it pays him. He can then use that certificate to try to reclaim the tax, if he is entitled to do so;

3. £175 for distress and inconvenience.

Christopher Gilbert
ombudsman