

complaint

Mr S complains that Tradewise Insurance Company Limited ("Tradewise") won't meet the costs of a claim a third party made against his motor insurance policy, and is seeking to recover from Mr S what it has already paid out.

background

In January 2017, a car insured on Mr S's policy drove into the rear of a third party's car. In February 2017 the third party's insurer contacted Tradewise to claim against Mr S's policy for the damage to the car and personal injury to the third party driver.

Tradewise phoned Mr S to ask him what had happened. Mr S denied knowledge of any accident and said his car was undamaged. The third party had said the person driving Mr S's car had given his name as Mr M. When Tradewise mentioned this to Mr S, he ended the call.

Tradewise left a voicemail asking Mr S to contact it, and warning that if he didn't it would have to deal with the third party's claim and could seek to recover the costs from Mr S. A few days later, Mr S did phone Tradewise. He said his car had driven into the rear of the third party's car. He said he had been driving at the time, and Mr M had been his passenger.

Tradewise sent Mr S a claim form to complete and return. It also appointed an engineer to examine Mr S's car, and an investigator to interview Mr S, so it could establish what had happened, and decide whether to challenge the claims the third party was making. However in spite of a number of attempts and messages left, neither was able to make contact with Mr S, and Tradewise didn't receive the completed claim form.

Tradewise had no option but to settle the third party's claim on the best terms it could. It then wrote to Mr S saying that as he hadn't cooperated with Tradewise in respect of the claim, it wouldn't cover him in respect of the claim and would cancel his policy. It would also seek to recover from him the money it had paid to the third party in respect of the claim. Mr S complained to Tradewise about this, and when it didn't accept his complaint he complained to us.

Our investigator didn't recommend that this complaint should be upheld. He said Mr S had a duty under the policy to tell Tradewise about any accidents, and to cooperate with it in respect of any claim made. However Tradewise heard about the accident from the third party's insurer, not Mr S, and Mr S failed to cooperate with Tradewise, or with its engineer and investigator, in respect of the claim.

The investigator acknowledged that English wasn't Mr S's first language. However from conversations he had with Mr S he thought Mr S understood from previous experience what he needed to do in an insurance claim.

If Mr S had cooperated with Tradewise, the investigator thought it wouldn't have had to pay as much to the third party, if anything at all. As it was, it had negotiated down the amount claimed by the third party, but still had to pay some £8,500.

Mr S's insurance policy contained the following terms:

"2. Full details of any incident which may result in a claim under this Insurance shall be reported to the Claims Department as soon as reasonably possible on 0800 205 5513.

5. The Company shall be given all information and assistance they may require in connection with any such incident or claim in respect thereof;

13. The Company reserves the right to seek reimbursement from the Insured for any increased compensation and/or costs incurred due to failure to complete paperwork and/or late notification of any incident."

The investigator thought Tradewise was acting fairly in relying on these terms to ask Mr S to repay its claim costs. He recommended that Mr S contact Tradewise to negotiate a payment plan.

Mr S responded to say, in summary, that:

- he had phoned Tradewise earlier in January 2017 on a mobile phone to tell it about the accident. It was a pay-as-you-go phone so he had no record of the call to prove this;
- he had tried to contact the investigator to arrange an appointment without success; and
- he had sent some documents about the claim to his broker.

So he thought he had complied with the policy terms, and had cooperated with Tradewise about his claim.

The investigator said this didn't lead him to change his view. The third party maintained it was Mr M, not Mr S, who was driving Mr S's car at the time of the accident. And the investigator didn't think Mr S had taken reasonable steps to assist Tradewise, or the investigator and engineer it appointed, with their ongoing enquiries.

Mr S asked for his complaint to be reviewed. He said he had provided evidence that he had phoned Tradewise in January 2017 and during the claim, and had provided information to his broker as well as to Tradewise.

my findings

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

Tradewise has no record of Mr S notifying it of the accident before Tradewise was contacted by the third party in February 2017. It then phoned Mr S, whose initial response was to deny all knowledge of the accident. Mr S then phoned Tradewise to admit the accident, and to say he had been driving the car.

This initial contradiction made Tradewise suspect it was Mr M, not Mr S, who was driving at the time of the accident. This was supported by the evidence of the third party who said he only saw Mr M at the time. If this was the case, the claim wouldn't have been covered by Mr S's insurance policy.

Tradewise said Mr S would have to complete and return an accident report form. Mr S says he sent this to his broker. But Tradewise's claims department was dealing with the claim and it should have been returned to them. They didn't receive it. Mr S also failed to contact the engineer and investigator, who each made several attempts to get in touch with him.

All in all, like the investigator, I think Mr S knew from early February that he needed to get in touch with Tradewise, its investigator and its engineer, to help them with the claim. Tradewise took reasonable steps to make contact, and warned him in its initial voicemail of the consequences of his failing to do so.

Mr S told the investigator he didn't listen to his voicemail messages. But he was a part time motor trader, and was restricted in using his phone during his main occupation. So I think this is unlikely.

In view of the policy terms I've set out above, I think the failure of Mr S to cooperate means it's reasonable for Tradewise to require Mr S to repay what it's paid the third party under the claim. I recommend Mr S to get in touch with Tradewise to agree a suitable repayment plan.

my final decision

My decision is that I don't uphold this complaint, and make no order against Tradewise Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 August 2019.

Lennox Towers
ombudsman