

complaint

This complaint concerns eBike's initial decision to reject a theft claim on Mr D's motorcycle policy and the proposed settlement when it changed its mind.

background

In summary, Mr D's claim was initially declined because eBike was not satisfied he had taken reasonable steps to safeguard his scooter. However, to help resolve the complaint when Mr D approached us with his complaint, eBike valued the scooter at £3,500 and paid Mr D £3,350 after the £150 excess was deducted.

Mr D believes the scooter was worth £4,150 and he also wants reimbursement of £5,727 for potential hire costs (loss of use), £400 for time spent pursuing the claim, £70 for phone calls and £100,000 for distress and inconvenience.

The adjudicator was of the opinion that eBike should add 8% simple interest to its payment for the market value of the scooter, from the date of loss (15 December 2010) to the date payment was made into Mr D's account (20 January 2012). However, he did not think eBike's initial rejection of the claim meant eBike had breached its contract with Mr D and he did not seek any other award from eBike.

eBike agreed to add 8% simple interest to the settlement and has also confirmed it will reimburse Mr D if he has made more calls than might reasonably be expected.

Mr D disputed the adjudicator's findings and asked for an ombudsman's final decision.

Briefly, Mr D told us that eBike did not advise him to do anything differently after the first three thefts, so he had no reason to assume he was not covered for that type of theft. Mr D believes he is entitled to compensation for loss of use because he could not afford to hire a vehicle; had no access to other vehicles and needed a vehicle to progress the Department for Work and Pensions 'back to work' program. He told us he suffered lost sleep, anxiety, stress and depression as a result of eBike's actions, including its breach of contract by initially rejecting the claim. Mr D also believes he is entitled to a new scooter because the ombudsman service's guidelines state that vehicles pre-registered by a dealer are usually treated as first registered when they were sold to a policyholder.

Further enquiries were made and eBike agreed to award £150 compensation to make amends for the delay settling the claim. eBike also confirmed that Mr D declined a new for old offer on 17 May 2011, which is why eBike offered a cash settlement instead the next day.

my findings

To decide what is fair and reasonable in this complaint, I have considered everything that Mr D and eBike have provided.

There is no dispute that Mr D was the innocent victim of a crime when his scooter was stolen for the fourth time, but following the investigation and the police report, I do not find eBike breached its contract with Mr D by initially rejecting his claim. I find that it was entitled to thoroughly investigate Mr D's claim for theft, considering it was the fourth theft claim he had submitted.

The scooter was first registered on 27 October 2010 before Mr D bought it on 12 November 2010, but the policy's terms and conditions state a new replacement motorcycle only applies when the policyholder is "*the first registered owner of your motorcycle*". As Mr D noted we tend to consider vehicles immediately registered by a consumer after such a first registration by a dealer, to be the first registered owner for the purposes of these clauses. However as Mr D was fortunate to buy his scooter from the dealer for a price substantially lower than its market value at that time, I find that he has not been prejudiced. Mr D paid £2,750 for his bike and eBike has paid him £3,350 and is now willing to add interest at 8% simple interest per annum on that sum. In addition, I am satisfied that Mr D declined a 'new for old offer', so I do not think it is fair or reasonable for eBike to pay the full market value now.

Mr D confirmed that he did not hire another vehicle so I cannot ask eBike to pay £5,727 for alleged hire costs. However, ostensibly, Mr D may be entitled to a loss of use payment. To be entitled to any loss of use payment, I must find that eBike incorrectly refused to settle Mr D's claim or took too long to settle his claim. In my opinion, eBike could have settled the claim in March 2011 instead of April 2011, so it did take too long. However, we do not normally award loss of use for theft claims. However, Mr D's scooter was stolen, so in effect the thief is responsible for the loss of use, not eBike. Nevertheless, I appreciate that Mr D would have been upset and frustrated by the delay and I consider eBike's offer of £150 compensation to be fair and reasonable.

Similarly, I do not doubt that Mr D has suffered from lost sleep, stress, anxiety and depression and I sympathise with the difficulties he has faced. However, I agree with the adjudicator that a majority of his concerns are about the police. I am satisfied that eBike tried to contact Mr D and pay him by cheque in a timely manner, but it was subsequently told by Mr D that he did not have a fixed address and had problems with his mobile. The settlement was ultimately paid into Mr D's bank account and it is fair and reasonable that eBike should add 8% simple interest to that settlement, something it has already agreed to do.

I realise that Mr D spent time and effort making a claim and then making a complaint and I accept that caused him some distress and inconvenience. However, I am not persuaded that this merits any financial award.

Whilst unfortunate, there is always a degree of distress and inconvenience following a claim or complaint, but I have not seen evidence that eBike's handling of the claim and subsequent complaint has caused any unusual distress and inconvenience. eBike has already agreed to reimburse Mr D if he can evidence he has made more calls than might reasonably be expected, so I would expect Mr D to discuss this in more detail and provide any evidence of these calls.

my final decision

For the reasons above it is my final decision that I uphold this complaint in part.

I order eBike to add 8% simple interest to its settlement to Mr D such period of interest to run from 15 December 2010 to 25 January 2012 inclusive.

I also order eBike to award £150 compensation for the distress and inconvenience it caused by the delays settling the claim.

Should Mr D provide evidence to eBike of the issue that he has had to make more calls than might reasonably be expected, then I would expect eBike to reimburse their cost to Mr D.

Otherwise I make no other award against eBike.

Rona Doyle
ombudsman