

Claims Insight


 SX3

SX3 brings together Steve Bilham, Chairman of Sovereign Automotive and Phil Rawlings, SX3 Associate to discuss taxi hire claims and practices both on the part of the claimant and compensator communities.

Q1 Are there any practical differences for claims between Private Hire (PH) and Hackney Carriage (HC)?

Steve - In essence, the only real difference is the practical application of supplying the client with the right vehicle. It is important for handlers to be aware that Local Authority guidelines (300 plus across England and Scotland) will vary and therefore impact upon the nature of hire and the ability to provide it in the first place.

There are restricted volumes of HC vehicle within some local authorities such as Manchester & Liverpool, where supply of a hire vehicle is not an option due to plating transfer and ownership issues. Other authorities will permit the use of any type of vehicle to be classed as an HC, subject to meter and roof sign requirements.

London has an unlimited volume of HC vehicles, the London Black Cab, where anything else falls within the remit of PH.

Whilst a large taxi fleet may have invested income in purchasing spare vehicles to cover maintenance and servicing, these are not in place to provide an in-house option for any non-fault claim. If they can't provide their driver with a car he or she will simply go and work for someone who can.

Phil – *From an Insurer perspective and experience as a compensator, handlers wouldn't necessarily be aware of the ripple effect and consequences this could have on a fleet's capacity, however it is important that claims handlers have the correct points of reference around the vehicle type, so they use the most appropriate approach and don't waste their own resource around deploying incorrect arguments.*

Q2 Hire v Loss of Profits – what are the factors that determine which is the fairer settlement outcome?

Phil - *Going down the loss of profits route straightaway isn't always the answer, and perhaps steps for alternative routes are being overlooked. Whilst I don't doubt that in some cases the hire charges were correct, if it's £200 a day against loss of earnings of £60, then why isn't that the basis of the claim?*

Steve – A lot of taxi drivers are impecunious and cannot afford to wait weeks or months for an insurer to make a loss of profits claim whereas a CHO has the ability to put the client in the to the same position he was prior to the accident a lot quicker, normally hours or at worst days. I acknowledge that, in the past, day rates may have been deemed greedy, but I question whether cases are being used by Insurers as technical legal arguments to effectively delay payment or not pay claims at all. Dimond v Lovell is a historical example of this and Hussain v EUI is a more recent example.

Dimond and Hussain both provide reminders that a fairer settlement is about fairly compensating a claimant. Dimond confirmed compensators are liable to put the claimant back in the position they were in prior to the incident, and Hussain is a reminder that fair compensation isn't a simple choice of the cheapest option for the insurer and there are broader considerations for fairly compensating a claimant. Hussain does not apply in instances where the hirer has school/corporate contracts in place, needs a vehicle for their own personal use or is impecunious and needs to pay their mortgage/rent, insurance, and other bills at the end of every day/week and month.

There is a reliance by compensators upon Credit Hire Organisations (CHOs) to provide a level of service to a customer that they cannot.

Phil – Compensators will only pay what the claimant is legally entitled to recover. Of course, many claims are settled without litigation, and it is generally only those with extreme features that attract serious attention from Insurers and lawyers alike and are subsequently the ones reported which gain the most publicity. Given that impecuniosity is a “hot topic” generally and not just in claims for taxi hire, the well-publicised successes only serve to focus greater attention on the need for full and early disclosure where impecuniosity is a valid feature. Compensators hear the allegation being made only for it to fail to materialise once litigation has started. Equally any delay or perceived lack of complete disclosure only serves to strengthen the compensators resolve.

Q3 What can be done by Insurers to reduce long hire periods on lower value vehicles?

Steve – The timeliness of the response is key. Early admissions of liability and proactivity on the part of compensators, particularly in terms of repair authority or early payment release is beneficial. but if a payment is made net of VAT when the hirer is not VAT registered this still means they are 20% out of pocket and can't get the vehicle repaired!

Additionally, as a company, we don't favour long hire periods and have no agenda around them. The goal is a 100% recoverable hire period. We are not ABI affiliated but would try to abide by the GTA, and also offer the compensator the right to intervene, but this is very rarely taken up.

Full mitigation discussions take place with each and every prospective hirer and they are questioned regarding use of comprehensive cover. Taxi cover in particular is expensive, attracts high excesses and very often claims are not settled by renewal, resulting in even higher premiums because of a claim on a policy – and it's a non-fault one at that.

Contrary to popular belief, credit repair is a huge cash drain on any organisation and is often met with a query from Insurers as to why it didn't take place on day one.

Phil – There's a challenge here on the efficiency of process, engineering evidence isn't always sent directly to the at fault Insurer, nor is it always by the fastest route and in some instances still sent via post! Requests for cheque payment elongates hire and there is too much margin for error.

Steve – The ideal is same day payment direct to the client, demonstrating an efficiency of process, control of the hire period and empathy for the individual involved.

Q4 Where do you stand on the hot topic of Impecuniosity?

Phil – Clearly, it's imperative for any compensator to make all enquiries up front, to avoid wasting resource on claims not requiring that level of scrutiny. They should be looking to refute impecuniosity for the right reasons as opposed to skirting around it for the wrong ones!

Steve – We are mindful that an inability to prove impecuniosity can impact every head of claim. Currently, we are piloting an open banking solution whereby the client gives access to their real time financial data via a secure portal pre-hire, enabling us to quickly determine their true level of financial means. It's yet to be tested legally, but research to date suggests the basis of it is valid, and the speed of delivery can significantly

reduce decision making times. It will be a further 6-9 months before the effectiveness of any outcome is apparent.

Understandably, some clients may feel this is too invasive, and so we must decide whether to take a risk or not. However, if compensators try to box us into a corner around impecuniosity then as a non-ABI provider there will be no leeway on commercial rates. We would always prefer to talk numbers and negotiate but if this approach is declined then the full commercial route is the consequence.

Q6 So, what is the way forward?

Steve – There's less distrust of the CHO market, but there is still a long way to go to maximise relationships with Insurers and define a consistent approach, however we do have some protocols in place with two-way dialogue and auditing rights, so it's not impossible!

I've already mentioned the scarcity of intervention, but if Insurers are going to do it, then they need to move away from the blanket letter strategy which doesn't allow for the fact that hire must be of a licensed vehicle, they must prove they can obtain a lower rate, and if so, there is an opportunity to agree this with us with the same direct payment terms.

Phil – *The ideal is for both sides to work together transparently making early decisions for progression, impacting positively on both length of lifecycle and cost control. Determining the route that the case should take will always assist in taking the noise out of the claims that don't need it.*

Conclusion

So, what have we learned? The objective of this discussion was to identify practices that claimants and compensator could adopt to reduce friction in the taxi hire claims process, whilst still achieving fair outcomes for all parties.

What is clear is the need for early disclosure and discourse -

From the claimant:

- What type of taxi are we dealing with here?
- What is the pecunious/impecunious situation?
- What is the daily need – bills to be paid or regular contracts to be fulfilled?

From the compensator:

- Make early decisions on liability
- Remove barriers from starting/completing repair works
- Authorise repairs or make interim payments direct for total loss by BACS

From both claimant and compensator:

- Provide contact points for each claim, to enable direct dialogue and early resolution of issues

The financial and economic impacts of Lockdown 2020 have brought a reduction in claims volumes, giving both sides the opportunity to step back and review handling tactics. With work on both sides there is the chance of an even less adversarial approach becoming the way forward.

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