

The complaint

Mr B complains that Gefion Insurance A/S incorrectly settled a third party claim on his car insurance policy, without his knowledge.

What happened

In June 2019 Mr B contacted Gefion about renewing his car insurance with it. He'd been driving a year and had bought a new car he wanted to insure. On receipt of the renewal paperwork, his representative for this case 'M' saw that a fault claim had been recorded on Mr B's insurance from February 2019 – from an accident in October 2018.

M, on behalf of Mr B, contacted Gefion to get more information about the claim, as well as to say that they hadn't been in an accident. Gefion provide details of the third party's (TP) claim and emails that it had sent to Mr B at the time the claim was made, asking for his input into what had happened. Gefion also said it called Mr B, but he didn't answer the phone.

M raised a complaint with Gefion. He said that Mr B hadn't received calls and that the emails were sent to his (M's) email address, not to Mr B. M said that when the policy was purchased, Mr B was asked for an email to send policy documentation to, so they agreed to use M's. But this was only given for this documentation – consent wasn't given for it to be used for anything else. M raised concerns about the length of time it took the TP to put in a claim – as it took four months. He was unhappy with Gefion's handling of the claim and that it had been settled as a fault claim without Mr B being able to explain there had been no accident at all. He said the TP had made up a false claim using Mr B's details.

Gefion defended its handling of the claim. It referred to Mr B's policy documentation and its Privacy policy for how it used M's email address – as given by Mr B. And it said that as it couldn't get in contact with Mr B it had to settle based on the evidence available. It referenced the black box in Mr B's car showing the car was in the correct location to have been involved in the accident. It also provided the claim form – however it was noted that the TP named the driver of Mr B's car as M, not Mr B. However Gefion maintained that without a response from Mr B, it had handled the claim fairly.

M brought Mr B's complaint to our service, acting as his representative. Our investigator didn't uphold the complaint as she said Gefion had tried to contact Mr B and had settled the claim in line with the policy terms. M disagreed on Mr B's behalf and asked for an ombudsman's decision.

I issued a provisional decision on this case in September 2020. I've attached a copy of this below, but in summary I didn't uphold Mr B's complaint. I considered that Gefion had appropriately used his email and had fairly settled the claim.

M and I corresponded directly after this provisional decision. He asked some questions and requested an extension to respond to the provisional decision, pending receipt of a Subject Access Request (SAR) with Gefion, and the outcome of a complaint he'd made to the Information Commissioner's Office (ICO). I agreed to extend the deadline to give him time to

receive and review the SAR, but I didn't agree to wait until 2021, when he said the ICO would respond to him. I said this to be fair to both parties to this complaint, and as M had made a direct complaint to the ICO, where as I was looking at Mr B's complaint here. So I said I didn't consider I needed this other complaint to reach an outcome on Mr B's complaint with us.

At the end of October 2020 M provided his response to the provisional decision. He said the claims settlement was not and never was the issue in this case. He said Gefion's actions and inactions that preceded the settlement process formed the basis of his concerns. He said the consequence of this was Mr B wasn't able to challenge the claim against him, causing him to lose his no claims bonus. M explained he wasn't driving the vehicle at the time and had never said he was. M said he only provided his insurance details to show he *could* drive Mr B's car. M made additional comments and challenges in relation to Gefion's approach, the investigator's assessment and my provisional decision. And he asked me to revisit all his submissions and review my provisional decision with these and his further comments in mind.

Copy of my provisional findings

I will first deal with Mr B's complaint point about being notified of the TP claim.

M has raised a number of issues as part of this complaint about the use of his email address and the responsibility Gefion put on him. However, he is not a customer of Gefion and he is only acting as a representative in this complaint. So any complaint points or concerns he personally has cannot be considered under this case. I'm only looking into Mr B's complaint points and the impact these had on him directly.

Mr B is unhappy that Gefion contacted him by M's email to notify him of the claim. He says this was only provided for the initial set-up documentation to be sent to.

I haven't been able to listen to Mr B's set up call, so I can't comment on what was said regarding the email address in this call. However Gefion's Privacy policy (which can be found through a link in Mr B's policy terms) explains what the email address will be used for, which includes contact in instances such as claims situations. I appreciate the points M has made about the claims emails coming from another party's email address, however this is also explained in the Privacy policy and the policy terms name other parties involved in the insurance contract. So I don't consider Gefion has done anything wrong in relation to sending the emails to M's email address.

Gefion has also said it called Mr B, but he says he didn't receive any calls. I'm uncertain if Mr B would recall receiving (and not answering) calls from a number unknown to him months prior to his complaint. But in any event, as Gefion can't evidence the calls, I haven't placed much weight on them.

Mr B's schedule also lists M's email address as the contact email for this account. So it was Mr B's responsibility to change the email address to his own personal one if he didn't want his paperwork or any contact going to M. As these emails were received at the address Mr B gave, I can't say Gefion did something wrong in the way it handled this part of the claim.

M has suggested a number of ways Gefion could've done more to contact Mr B, but that isn't the test I'm applying here. Gefion has handled the claim in line with Mr B's policy terms and as he didn't respond to its emails, Gefion settled the claim based on the TP's case. I understand Mr B's frustration with this, as he says an accident didn't happen, so I'll now consider how Gefion settled the claim.

Looking at the information available from the reported incident, the black box from Mr B's car showed it was in the required location around the time the TP said the incident took place. And this records some heavy braking at that time. So without any further input from Mr B, this information suggests the car could've been involved in the type of crash the TP has claimed for. As Gefion didn't have any testimony from Mr B, I can't see how it could have reasonably defended the case at that time.

M has made a number of points and asked questions about the details of the TP's claim and the amount Gefion paid out. But, in line with Mr B's terms (general conditions, section 2, 2c.), Gefion has the final say on how claims are settled, so it isn't required to provide all these details or discuss this with M/Mr B now. And regardless of the costs involved, this would still be recorded as a fault claim on Mr B's record, considering Gefion couldn't defend the case.

M has pointed out that the TP didn't name Mr B as the driver at the scene – he gave M's name. And M has provided us with a copy of his own car insurance for the time of the accident, as he wasn't listed on Mr B's policy. This doesn't list Mr B's car, as M relied on his third-party cover to drive other vehicles. M has said he thinks the TP could've accessed details from the Motor Insurer's Database to create this [false] claim.

The type of personal information the TP held isn't accessible to the public on the database M has referenced. And – particularly in this case – the TP gave M's name, but Mr B's policy details. So even if I were to accept that the TP somehow accessed Mr B's policy details online, it still isn't clear how he ended up with M's name. Mr B is the only person named under his policy, so the TP would have seen his name, not M's. And as I've set out above, Mr B's car details are not on M's policy either. So for the purposes of car insurance, possibly bar an email address, there is no link between them.

M has suggested that Gefion's investigation into this claim is flawed and that, based on the claim notification form, he was driving the car.

It isn't clear if M is saying he was actually driving the car – considering both he and Mr B have previously said there was no accident and they couldn't recall who was driving the car that day. Or just that he could've been driving. But in any event, as I've set out above, without Mr B's testimony at the time, I don't think Gefion was wrong to settle this case.

Even if an unknown third party was driving Mr B's car, Gefion is still responsible for the TP's costs, as it insures this vehicle if it's been stolen. Although it's important to add that at no time has Mr B said his car was driven by anyone other than him or M. Without a response from Mr B at the time, Gefion didn't have access to any other details to recover its costs elsewhere, so it had to settle, and the cost and claim were recorded on Mr B's policy. This would only change if the identity of the driver became known and they were insured – so the costs could then be passed to that person's insurer.

I put M's comments about him being named as the driver to Gefion. It responded and explained that the TP also provided a witness statement from the accident with a description of the driver of Mr B's car. The TP said the driver was a male between the ages of 18 to 21 and provided the TP with his name (the same as M's name) and his insurer's name, before quickly driving away. Based on this, Gefion said it wasn't willing to contact M's insurer about it taking over this claim. M has not provided his age to us, but considering his relationship to Mr B, I can't say Gefion has acted unfairly by saying

it considers it highly unlikely he was driving Mr B's car at the time of the accident. And as the car wasn't reported as stolen, that leaves Gefion responsible for this claim.

As I've already explained above, without a response from Mr B, I don't consider Gefion acted unreasonably by settling this claim. It contacted its insured party using the details he had given it. And Gefion has reported that it did also try calling Mr B, although it hasn't been able to evidence this. Gefion was aware that the car it insured was in the area of the accident when it's reported to have taken place. And the TP gave his insurer the correct details in terms of the car registration and the correct insurer for that car – which aren't easily accessible details to the public. There's no testimony or evidence to support the car was stolen and the driver description doesn't match M. So I think Gefion has fairly settled this claim and it doesn't need to do anything further.

What I've decided – and why

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

I've reviewed Mr B's case file, but I haven't found any cause to reach a different outcome than I previously reached. I've answered the key further points and questions M raised in response below. But, my overall outcome has remained the same.

M argues that Gefion has failed in its duty of care to Mr B in how it notified him of this claim. But, there is no set way in which Gefion was required to notify Mr B of this claim. The policy terms do not specify exactly how Gefion will contact Mr B in the event of a claim against him – and the privacy policy lists a number of ways in which the insured *could* be contacted when Gefion is providing and managing the insurance policy.

As there is no set requirement for the type or level of contact, I have to consider whether Gefion did enough. It's not in dispute two emails were sent and received at the email address on file for Mr B. And Gefion has also said it called Mr B, but I accept there's no record of this. While Gefion could've done much more to contact Mr B, ultimately, we have records of it contacting him twice on the details he gave, with nearly a week between these emails. And M has acknowledged receiving both of these, so while he didn't open the emails, he had constructive knowledge of them. So, on the basis of the level of contact, I'm satisfied Gefion did enough. However I've considered M's arguments for why that's not the case here.

M accepts that Gefion sent emails, which he received, but he's suggested it should've made phone calls, left voicemails, sent text messages, sent a telegram and/or sent a letter. While I can see the benefit of Gefion contacting Mr B by something other than email in this case, as M deleted and didn't read the emails, I can't agree the level of contact suggested is a necessary or proportionate requirement to place on Gefion. In the vast majority of cases, I expect a consumer would read the emails they received – and so the level of contact M has suggested would be surplus to requirements and also not cost-effective. Gefion has set out that it requested the information and, as it had a deadline to respond to the third party, it gave Mr B a deadline too, which also doesn't seem unreasonable. And, as M did get both emails, Gefion didn't receive any bounce back. So it determined Mr B wouldn't be replying and progressed the claim accordingly.

M has provided justification for why he didn't open the emails and has argued that he and Mr B had nothing to gain by this, but a lot to lose. However I'm not deciding whether or not M acted correctly in this situation – my role is to review Gefion's actions. This is important, because there could be a situation where both parties acted reasonably and yet still

someone has lost out. But, if the business has done what I'd expect and acted as it should, then this wouldn't lead me to uphold the case.

I understand why M feels so strongly about this case and I do appreciate his justification for not opening the emails, alongside listing the other ways Gefion *could* have contacted Mr B. But I can't say what Gefion did was unreasonable.

M has accused Gefion of focussing more on disposing of the claim than its duty of care to Mr B. And questioned why it would email Mr B if it had tried to call him (if I was saying something such as a call meant it had done all it had to as per its guidelines). But, as he has also pointed out, this claim has cost Gefion a substantial amount of money. And regardless of whether a claim is being fought or accepted, it still takes up administration time. I've seen no evidence that Gefion acted unreasonably or was looking to settle this case 'as quickly as possible'. And logically, I can't see why an insurer would rather pay out a large claim, than defend it – if it could.

With all that said, we decide cases on both what's fair as well as reasonable. So I've considered whether Gefion's actions were also fair in the circumstances of this particular case.

Mr B says he only gave Gefion consent to use M's email for the welcome email and paperwork – so it made a mistake continuing to correspond on this. But, as I've previously set out, M's email was included as the contact email on the paperwork when it arrived. And, in several places, the documentation highlights to Mr B that he should contact Gefion if there were any errors, but he didn't. So, even if I were to agree with Mr B that Gefion made a mistake here, this still means Mr B also made a mistake by not correcting his paperwork. M has told us he ensured Mr B complied with Gefion's request and checked the documents for accuracy, as did he. So I'm uncertain as to why they didn't ask for M's email address to be removed at this time, if they didn't intend for or want it to be used going forward.

As Gefion didn't receive any updated contact details for Mr B, when it received the third party claim it wasn't aware that it shouldn't use the recorded email address. And it also had no awareness of how M dealt with emails from unknown senders. On that basis, it can only apply its knowledge of the average consumer – and I would say it's reasonable to assume the vast majority of people do open their emails, especially when one of their insurer's names is contained within the email address. M has argued that he shouldn't have been expected to remember the insurer's name eight months after Mr B set up the cover – and considering this wasn't his policy, I can appreciate his point. But, I also can't expect Gefion to have known that M deletes every email he receives from anyone whose name he doesn't recall. So while M has explained how he came to delete the emails, that doesn't change my view that Gefion acted fairly in how it contacted Mr B.

M has also raised concerns about the timescales Gefion applied in its emails and has argued it didn't have to settle the case until several weeks after it said it did. However, as M deleted the emails without reading them, I don't see how this has any impact on the outcome here. Even if Gefion had given Mr B a longer deadline or emailed him more times, M would've still deleted the emails without opening them. And, while I accept it could've contacted him by a different medium, there wasn't a requirement for it to do this. So this doesn't change my decision.

In relation to how the third party gained M's name, M has suggested that they could've simply conjured up that name to bring authenticity to the claim. Or that with cyber-crime on the increase, they came across his name by means of a computer and the internet.

M's points here are purely speculative. And, as I have previously set out, M has no links to Mr B's policy. I'm afraid I find it implausible that a third party 'conjured up' a name which exactly matched that of someone close to Mr B. And, if the third party is as sophisticated a criminal as M has suggested, it would seem strange they ended up with M's name and not Mr B's. This is especially as their searches would relate to the details they did know about Mr B only – namely a visual description of him, his registration and the name of his insurer. So this possible explanation also hasn't changed my decision.

M has confirmed that he's not disputing the way Gefion settled the claim. But he's provided details that attempt to call into question whether or not the claim was genuine. Ultimately the validity of the claim was something Gefion decided without Mr B, as he didn't get in touch with it. And, as the settlement isn't in dispute, I don't consider I need to comment on this further.

While I haven't commented here on all of M's further points and submissions, I've read them in detail, but my role isn't to answer every single point or question raised. It's to deal with the crux of the complaint. I appreciate this outcome will be a disappointment to Mr B and M. But it seems that ultimately, the complaint in this case revolves around Gefion using the email it did and M's expectations of how Gefion should've acted. I've explained why I think Gefion was able to use the email address. And I can't say that the expectations/standards M is applying are necessarily the same as those of an average consumer, or, more importantly, the standard that Gefion agreed or contracted to meet. So while I do appreciate why M acted in the way he did, I'm not concluding that Gefion has done anything wrong.

My final decision

For the reasons set out above and in my provisional decision, I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 December 2020.

Amy Osborne
Ombudsman