

The complaint

Mr C's unhappy that One Insurance Limited (One Insurance) has declined to deal with his claim under a motor insurance policy.

What happened

Mr C was driving his car on a road he uses regularly. His car hit an area of deep water in the road. It was flooded and subsequently written off.

One Insurance investigated Mr C's claim under his motor insurance policy and declined to deal with it. It said he'd breached the policy terms and conditions. These say he must take all reasonable steps to protect the car from loss or damage. It said he'd known the road was wet. And there was a flood warning sign. It also said he would've seen other road users struggling with the conditions.

One Insurance said it couldn't accept Mr C had taken reasonable steps to protect his vehicle in accordance with the policy terms. And as he'd breached the policy terms it couldn't therefore indemnify him for his loss.

Mr C didn't agree. In summary he said he'd fulfilled the policy condition. He was completely unaware of the volume of water on the road due to a river having just burst its banks. The water's depth had suddenly increased. Mr C wants One Insurance to deal with his claim.

Mr C brought his complaint to this service. In addition to wanting One Insurance to deal with his claim, he complains that One Insurance handled the whole claim process badly. Specifically, he complains that One Insurance transported his vehicle to a storage facility 200 miles away and didn't tell him where it was until 15 days after the incident.

Our investigator felt his complaint should be upheld. He thought it was unfair to say that Mr C didn't take adequate precautions to protect his car. He felt One Insurance should deal with the claim.

One Insurance disagreed. In summary it said that Mr C did have time to react to the conditions. So this complaint has been passed to me for a final decision.

I issued a provisional decision on 15 April 2021. I said:

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

One Insurance's policy made clear in its terms and conditions that, amongst other things, You or any person in charge of your car must take reasonable precautions to:

- *Maintain your car in an efficient and roadworthy condition*
- *Protect your car from damage or loss*

This term has been brought to Mr C's attention and he accepts it was a condition of his policy.

So, the question I must consider is whether or not Mr C did in fact take all reasonable steps to protect his car and whether One Insurance have acted fairly, reasonably and in line with the policy terms and conditions by declining to deal with his claim.

Mr C strongly denies that he put his vehicle at risk. He says the following: "The flood had only just happened, and was still happening because, although I went into a foot of water, the water was still rising, and I had to get out of my vehicle and wade to a safe spot". He says this proves that the river had only just burst its banks at the time of the incident. Mr C also says: "In my opinion there were no clear indicators that the river had burst its banks. When I swerved to avoid the debris in the road, the road was no different to the usual after heavy rain. Indeed, there is a cautionary sign stating that there may be a potential hazard ahead, namely a flood, but no more of a flood than the usual 1 to 2 inches." He notes that he drives on this road two or three times a week, so he knows it very well. So he says he knows that when there's been heavy rainfall the road does flood a little.

Mr C also says that he brought his vehicle to a stop as soon as he realised what was happening, noting that this was well within the stopping distances for a vehicle travelling at 30mph. Mr C says that the fallen barrier he drove around before reaching the flood waters was a foot under water ten minutes after the incident.

One Insurance says Mr C should've been aware of the risk of flooding from all of the warning signs – the flood warning sign, the fallen barrier, the other stopped vehicles and the surface water. It says that "despite these clear observations, he begins to accelerate towards the water. Only begins to slow down after hitting deep water and is too late to avoid".

In their final response letter, One Insurance gave the following reason for rejecting his claim: "As the dash cam footage showed clear indicators of risk prior to you proceeding to drive further down the road, it is deemed the incident could have been prevented should the warnings have been adhered to".

Although the policy term says Mr C must take "all reasonable steps" to protect his car I don't think this can fairly mean he must take all possible measures to avoid damage that he himself couldn't reasonably or didn't actually foresee.

In this case the incident was recorded on Mr C's dash cam. So I've been able to review the footage. It shows that it was dark. Mr C had to avoid a barrier which had fallen over. The dash cam shows Mr C was driving at around 20mph. He swerved to avoid the fallen barrier, thinking it was debris in the road. I think most drivers would've done the same. Almost immediately after that, he reached the flood waters. So although the dash cam shows that he braked at this point, by the time he stopped the flood waters were up to his bonnet.

Taking everything into account I agree with Mr C that he acted responsibly by reducing his speed to reflect the poor light, visibility and wet road conditions. I think he was reasonably aware of the potential risks he faced given the general conditions and his knowledge of the road.

And I don't think there's anything to suggest Mr C was negligent or reckless by proceeding and continuing to drive as he did. I don't think on balance that he continued driving after he should've recognised there was an actual deep-water risk ahead of him. Neither do I think that he recognised the risk but ignored it, thus deliberately disregarding the car's safety.

So I don't think One Insurance have shown that Mr C failed to take all reasonable steps to protect his car from damage or that he's breached the policy terms. So I'm not satisfied that it's fairly declined to deal with his claim.

I intend to ask One Insurance to deal with Mr C's claim subject to the remaining terms and conditions of the policy. It should also pay him interest on the amount it pays him from the date of the claim until the date of payment.

Distress and inconvenience

It's clear that Mr C has experienced considerable additional distress and inconvenience, over and above that which any consumer experiences in dealing with a similar claim, as a result of the way One Insurance has declined this claim. While it is of course reasonable for One Insurance to investigate the damage in an incident like this to see if the policyholder acted negligently, I'm satisfied that it reached the wrong decision on his claim. I think it's reasonable for Mr C to be compensated for this.

Because Mr C's claim was declined, he was never offered a courtesy vehicle. So he's been without the use of a vehicle since the incident, but is still paying for the vehicle.

Mr C also notes that his vehicle has been stored 200 miles from his home. So he's not even been able to retrieve his personal belongings. He didn't find out where his vehicle had been taken until 15 days after the incident.

Mr C recently provided additional information. He said that on the day of the incident he first phoned his roadside assistance provider for help. He said they arrived within 45 minutes of the incident. And that they told him they could tow his vehicle out of the flood waters with approval from his insurance company. He says he immediately phoned One Insurance and told them his roadside assistance provider was on scene and could tow his vehicle out. He says One Insurance told him not to allow that. And that it would send one of their own contractors to collect the vehicle. He goes on to say that his vehicle could've been pulled from the water an hour after the incident. But One Insurance didn't retrieve the vehicle for two days.

I can see that One Insurance's claim notes state that the vehicle would be retrieved when the water levels had fallen. But I imagine it must've been frustrating for Mr C having to wait to have his vehicle towed, knowing more damage was being done to it all the time it was in the water.

Considering everything, including the level of awards we make, I think a payment of £500 compensation for this is fair for all the distress and inconvenience Mr C has suffered.

Response to my provisional decision

Neither One Insurance or Mr C responded to my provisional decision.

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.

No new information has come to light to change my opinion. So I remain of the view I set out in my provisional decision.

Putting things right

To put things right, I require One Insurance Limited to:

1. Deal with Mr C's claim subject to the remaining terms and conditions of the policy including excesses and limits.

2. Pay simple interest at the rate of 8% a year* on the settlement payment it makes from the date of the loss until the date it pays it; and
3. Pay Mr C £500 compensation. One Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mr C accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year* simple.

* If One Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons set out above, I uphold this complaint. I require One Insurance Limited to do what I've set out in the "Putting things right" section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 June 2021.

Jo Occleshaw
Ombudsman