

The complaint

The owner of C, a taxi firm complained that Gefion Insurance A/S declined his commercial motor insurance claim, following the total loss of a taxi which was damaged during a flood.

What happened

I set out the background to the complaint within my provisional decision and copied here.

One of the taxis owned by C was being driven by an employee of the business, Mr J during a heavy flood. Mr J had driven his own car to C's premises to collect the taxi then returned along the same road.

At the time of Mr J's journey there was heavy rain and flooding in the area. Mr J drove the taxi through what he thought to be about 20cm of water on the road, when he had passed through the water the taxi cut out and he got out, he says the water level had risen to about 30-40cm deep in the 10 minutes it had taken him to collect the taxi.

Water had got into the taxi engine and it couldn't be repaired. Gefion said they were declining the claim because Mr J hadn't taken all reasonable steps to safeguard the vehicle from loss or damage as required by C's policy. They say Mr J should have known driving through the water would have been risky. C says Mr J knew the area well including the conditions from previous floods and didn't consider there to be a risk.

Gefion contacted the local council who confirmed in an email there would have been road closure signs present and provided several pieces of media footage from the day in question which show how high the water was. They also provided evidence that the river close by the road reached the highest levels on record on that day.

Mr J and C however stated the river is known to rise and fall particularly quickly and just because the water level was high at various points in the day didn't mean it was when Mr J drove through the water.

Additionally, there were delays with C's claim about which C complained, there was a ten day delay between Gefion receiving the engineer's report and Mr J being interviewed about the incident. However, there were further delays caused by Mr J who cancelled two appointments at short notice and had limited availability due to work commitments. This meant the interview about the incident didn't take place for another 37 days.

Our investigator considered the evidence provided by both Gefion and C and concluded that Mr J's account and experience of driving in the local area and previous flood conditions meant that he believed it was safe to drive through the water and as such it wasn't fair or reasonable for Gefion to decline the claim. In recognition of the delays and the claim being declined our investigator ordered Gefion to pay C £250.00 compensation.

Gefion disagreed with our investigator's view and requested the case be reviewed by an ombudsman.

My provisional findings and the parties' responses

In my provisional findings I found it clear Gefion and C were in agreement that there was a flood in the area when Mr J drove the taxi through the water on the flooded road and it was this flood which caused the taxi irreparable damage.

The key points under consideration were whether Mr J could or should have known driving through the water was a risky choice to make and whether there were signs in place warning of road closures. In other words, did Mr J take all reasonable steps to safeguard the vehicle as required by the policy.

I accepted Mr J's account that he is familiar with the area and knows the road well, having previous experience of floods in there. I considered this ought to have alerted him to the risks of driving in this flood water. I also recognise that by several measures this was one of, if not the worst flood the area had seen, with the Environment Agency confirming the river was at its highest level on record. Mr J said there was no signage indicating the road closures.

I also reviewed evidence provided by Gefion which included an account from the local council. The local council explained they had no record of the exact times signs were put up and then taken down but confirmed there was signage in place stating, 'road closed' and 'road ahead closed' and these signs would have covered the junction Mr J used.

The local council explained staff first arrived in the area approximately 8 hours before Mr J drove C's taxi along the stretch of road. At this time they were assessing cracking to a nearby bridge and closed the road ahead of an engineer's assessment. The engineer arrived and left the area about 2 hours before Mr J drove through, but it was not until the following day that the local police force advised the council the water had receded enough to reopen the road.

Additionally I considered the delays C encountered. There were delays caused by both parties however lengthier delays were caused by Mr J's availability. While I appreciate why Mr J had limited availability and the importance of his work commitments it wouldn't be fair to hold Gefion responsible for that.

I balanced Mr J's account that there were no road closure signs up and the evidence of the local council. As the local council have said signs were put up and would have covered the junction used by Mr J. Considering the timings, I think it is likely they would have been in place when he drove past, however it is possible Mr J may not have seen them. Taking all of the information into consideration, I provisionally decided not to uphold C's complaint.

C responded to my provisional decision and supplied additional evidence in the form of a statement from Mr W who repairs vehicles for C. Mr W states approximately 45 minutes prior to Mr J he drove along the same road and didn't see any signage indicating road closures or flooding.

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 considered all the available evidence and arguments again to decide what's fair and reasonable in the circumstances of this complaint. Having done so I remain of the view that Gefion need not do anything further.

I have considered this new information further but I am not convinced it changes my decision. The key tenet under consideration is whether Mr J took all reasonable care driving

through the flooded road. I accept Mr J may not have seen any signage indicating road closures, however I believe the independent evidence provided by the council to be accurate. Additionally, the presence of signage is only one element of my consideration. It is apparent there was significant media reporting of the flood levels on the day and there was an Amber flood warning in place. Furthermore the river reached record breaking levels and as Mr J said he was very familiar with the road I think he ought to have noticed the unusual risk posed by the flood water.

Taking all evidence together I believe Mr J could have been more careful and his actions may be considered as not taking reasonable care of his vehicle. Consequently, I think it was fair and reasonable for Gefion to decline C's claim under the terms of the policy and I do not require it to take any action about C's claim.

My final decision

For the reasons given here and in my provisional decision I do not uphold the complaint and do not require Gefion to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 23 July 2021.

Sarah Scott
Ombudsman