

The complaint

Mr T complains One Call Claims Limited previously trading as Commercial Legal (OCC) have asked him to pay hire car charges following an accident. And a county court judgement (CCJ) was made against him without his knowledge.

What happened

In December 2018, Mr T's partner was involved in an accident she said wasn't her fault. Mr T's partner wasn't a named driver on his comprehensive motor insurance policy. But he said she was covered under her own comprehensive insurance policy for third party costs.

Mr T said when he called his insurer to report the accident after providing his details his partner took over the call. She told OCC the third-party insurer (TPI) had accepted liability and she was put through to the non-fault department. Mr T said the TPI had told his partner that they would cover the repairs costs and hire car charges, but they were dissuaded from accepting this offer by OCC as they said the TPI would be looking to save costs for their policy holder. Mr T said because of this it was agreed for OCC to handle the claim.

Mr T said in a call he was told that they shouldn't have taken on the claim as it was his partner who was in the accident. And that any claim should be made to her insurer.

Mr T said he didn't hear anything further until he saw he'd a missed call in March 2020 and called the number back. He was told it was OCC, they said they were calling about the accident and they confirmed his security details using his current postcode. But the call got disconnected. It wasn't until February 2021 when bailiffs posted a letter to him that he found he'd a CCJ against him. Mr T said he paid the bailiffs as the situation caused him extreme distress as he was worried about the impact of this on him and his family. Mr T complained to OCC.

OCC said they'd looked to pursue Mr T's claim through the courts as the TPI was disputing liability. But he hadn't responded to either them or their solicitors so the court case couldn't progress. OCC said as Mr T had been uncooperative the costs of the hire vehicle, he had use of fell to him. They said Mr T had told his insurer of his change of address, but he hadn't updated his address with OCC.

Mr T wasn't happy about OCC's reply. He said they'd told him they couldn't deal with the claim. And he hadn't heard from them for nearly 12 months so he hadn't known they were still handling the claim. He referred his complaint to us.

Our investigator said as Mr T's partner was the driver, Mr T's claim with his insurer should have been acknowledged as "notification only". He didn't think OCC should have accepted the claim. He also said OCC had Mr T's new address and as he hadn't been updated about what was happening, he couldn't be held responsible for the costs incurred. He said OCC should refund Mr T for the costs he'd paid under the CCJ. And pay £250 for the trouble and upset caused to him.

OCC didn't respond to the investigator's outcome, so the complaint has been referred to an ombudsman to decide.

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.

Having done so I'm upholding this complaint. I'll explain why.

Up until 31 March 2019, claims management companies (CMC) were regulated by the Claims Management Regulator. And complaints about CMCs were dealt with by the Legal Ombudsman. On 1 April 2019 the regulation of CMCs switched to the Financial Conduct Authority, and complaints moved to the Claims Management Ombudsman. Because the events Mr T is complaining about took place before this change in regulation, my decision is based on the approach the Claims Management Regulator and Legal Ombudsman would have taken.

In making my decision about Mr T's complaint I've looked at the role OCC had in handling his claim. And to see if what they did was fair and reasonable. So, I won't make any comment on what was done by the TPI.

The crux of this complaint is that Mr T is being asked to pay hire car charges incurred after the accident. OCC said Mr T failed to cooperate with them or their solicitors, so they couldn't take court action about liability for the accident. OCC said this meant they couldn't recover the hire car charges from the TPI. And as Mr T hadn't cooperated, they said he was liable for these costs. OCC has a CCJ against Mr T and a high court enforcement order.

I can understand Mr T's frustration as he wasn't involved in the accident. His partner was. OCC have provided some evidence for consideration but not the call recordings that we requested. Mr T has provided call recordings sent to him. As both parties have this evidence, I've considered it in my decision.

On the day of the accident, Mr T called his insurer to report the incident. In the call he's clear he wasn't the driver and his partner wasn't named on his insurance policy. But said she was covered to drive his car under her own insurance policy. Mr T is told by his insurer that this would be a "*notification only*", and that his partner needed to let her insurer know. He was also told he'd need to speak to a different team, but I didn't hear during the call an explanation as to why he'd be referred to the other team.

During the first notification call Mr T's contact details were noted, he confirmed two mobile telephone numbers, his email address and home address. His partner was then put onto the call to go through what had happened. She also gave her mobile number for contact. During the call Mr T's partner said that the third-party driver had disputed liability at the roadside. But reaffirmed that she wasn't at fault for the accident.

Mr T came back onto the call as he was concerned his insurance premium would increase. Again, he was told about "*notification only*", and his partner making a claim against her insurer under third party cover only. He was also told they'd need more details from the TPI before any definitive answer about his claim and the impact on his policy could be made.

When the details had been captured the call was put through to the other team. But during this time the TPI had sent a message to Mr T's partner to say they accepted liability. When

Mr T's partner said this had happened the call was referred for a second time to another team – their “*non fault side*”.- this being OCC, a CMC providing accident management services.

A CMC such as OCC would look to provide their customers with a hire vehicle, if needed and repair the damage caused to the vehicle by the accident – or determine the pre accident value of the vehicle if it's deemed non repairable. And claim these costs back from the TPI.

I've listened to the call between Mr T's partner and OCC. When Mr T's partner explains the TPI had accepted liability and that they were going to cover the repairs and hire costs, OCC tell her that they wouldn't take on her claim and would note it as “*notification only*”. But comment that the TPI would be looking to “*save money on their clients claim*” for their policy holder. This caused Mr T's partner some concern and she has a side conversation with Mr T. They agree to use the services of OCC. Its explained that as Mr T's partner was driving under her “*extension*” to her insurance policy she couldn't make a claim under her comprehensive cover. But it wasn't explained or discussed as to any impact of only being covered to drive under the extension of her comprehensive claim. Or how Mr T would be impacted by this.

In the call OCC confirm with Mr T's partner that they'd be able to cover any hire car costs themselves, explain that the hire agreement needed to be signed by the owner of the car and that the owner of the car would need to provide bank statements.

So, I think it's clear OCC knew it wasn't Mr T that was driving. And that his partner wasn't a named driver on his comprehensive insurance policy. I also heard OCC say that the TPI may try to “*scare*” them about having to pay the costs, and that that this would only happen if there was an issue with liability or they weren't cooperative.

I can see from OCC's notes that in January 2019 the TPI challenged liability for the accident. And initially OCC considered accepting a 50/50 liability. But on checking the details of the claim, and Mr T's partner's account of the accident, in August 2019 I can see OCC retracted the 50/50 liability. OCC considered Mr T's partner not to be at fault for the accident. Their notes assumed the insurer would cover the costs of the repairs but acknowledged that the driver wasn't covered on Mr T's insurance policy.

Mr T said he'd a call with the solicitors and been told they shouldn't have been dealing with the case as his partner wasn't on his insurance. From OCC's records I can see a letter from the solicitors dated February 2020 was sent to Mr T, but Mr T changed his address in November 2019 and this letter was addressed incorrectly as he had since moved. While I can't say this letter was received by Mr T, the first line of the letter said “*it was good to speak to you a moment ago*”. So, its clear that some contact was made. But I can see all subsequent correspondence about the pending court case was also sent to Mr T's previous address.

After an unsuccessful call was made by OCC to Mr T in March 2020 a letter was sent out the same day that gave him a seven-day notice period to respond, the letter was again sent to Mr T's previous address.

Mr T responded to the unsuccessful call as he called OCC back the same day. I have listened to the call. In it Mr T says he's calling back as he'd a missed call but didn't know who was calling him. OCC make themselves known; ask Mr T if he has a claim with them, to which he responds “*no*”. OCC tell Mr T the call is about his accident in December 2018. And go through security with him. There is an issue confirming his address, but its clear from the recording that Mr T passes their security checks using the post code to his current address

and not the previous address being used for correspondence. The call ended abruptly, not as OCC have said by Mr T ending the call, but I think due to a poor connection.

OCC has said Mr T didn't update them about his change of address, he'd only updated his insurer. But when OCC first spoke to Mr T's partner, they didn't ask for any contact details. So, I think OCC had access to Mr T's contact details from when Mr T had given or confirmed these details in the first notification call with his insurer.

I can see a record of the March 2020 call is in the case notes provided by OCC. As Mr T was verified through his current address details in this call, I think OCC by March 2020 was aware that Mr T had moved. There is only a record of one other unsuccessful call to Mr T after this and that was made later the same month. I haven't seen any evidence from OCC's case notes that any further attempts were made to contact Mr T even though there were various other communication channels open to them to use. OCC's records don't show the telephone number they used to call Mr T but in the first notification call he'd confirmed two contact telephone numbers and an email address. I haven't seen any attempts by OCC to contact Mr T between March 2020 and September 2020 when OCC held Mr T in breach of his contract – again this letter was sent to his previous address.

Mr T said he'd been told that the claim shouldn't have been referred to solicitors as his partner wasn't on his insurance. He also said he hadn't heard from OCC in over a year, until he'd received a letter from bailiffs. And it was only then that he knew there had been a CCJ made against him. I'm persuaded by Mr T's account, as outlined above I can see there had been a call between him and the solicitors. And he hadn't received any other information after this call as it was all being sent to an address he no longer lived at.

This has been a very distressing time for Mr T. I can understand his frustration as he wasn't involved in the accident, his car was. He'd reported the accident and been told by his insurer they'd record it as "notification only". And I don't think it was unreasonable for him to think any liability for the accident would need to be considered between the TPI and his partner, as he hadn't been in the car at the time of the accident.

Also, any correspondence that may have explained to Mr T what was happening about the accident claim was all being sent to an address he no longer lived at. I think OCC could have used the other communication channels open to them, and should have correctly addressed correspondence to where Mr T was living, I'm persuaded Mr T would have been cooperative as he wasn't the driver, his partner had been clear the accident hadn't been her fault. And OCC thought there was a strong case as they were looking to challenge liability in the court. So, taking all of this into account, on balance I don't think OCC has acted fairly or reasonably in their dealings with Mr T.

Putting things right

I can understand Mr T's frustration and the worry and upset that has been caused to him. Mr T said he was worried having a CCJ could affect his credit history and impact his ability to get a mortgage or rent another property for him and his family to live in.

So, to put things right I think OCC should refund Mr T the costs he's paid under the CCJ. Remove the CCJ or make clear the situation about the CCJ on Mr T's credit file. And pay Mr T £250 for the trouble and upset this caused him.

My final decision

I uphold this complaint. And ask One Call Claims Limited to:

- refund any monies paid by Mr T resulting from the CCJ;
- to have the CCJ set aside on Mr T's credit file; and
- pay Mr T £250 for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 18 July 2022.

Anne Scarr
Ombudsman