

## The complaint

Mr W complains about how U K Insurance Limited, trading as Churchill Insurance (Churchill), has handled two claims relating to his motor insurance policy.

## What happened

I issued my provisional decision on this case. It was my intention to come to a different outcome to our investigator, and so I wanted to give both parties the chance to respond with anything else they wanted me to take into account.

I have copied my provisional decision below, which forms part of this final decision.

*“Mr W was involved in an incident in which his car was damaged. He says he contacted Churchill and they advised him to use its approved repairer, who I’ll refer to as “D”.*

*Mr W wasn’t happy with the repairs that were carried out by D. Initially, he noticed that some additional damage had been caused to his car and, what looked like, wet tar had been splattered up the side. Mr W says he then noticed that the mileage on the car was higher to what it was when he took it in and asked if his car had been taken out at any point.*

*Initially, D said that his car hadn’t left the premises – but then later said that it had been taken for a test drive and had been driven around the different repair sites at the garage.*

*After Mr W spoke to Churchill, D repaired the dent and cleaned the wet tar off the car. Mr W says that when he went to collect the car again, he noticed that the front bumper and the wing mirrors weren’t aligned, and so he made a complaint.*

*Churchill agreed to have the car checked over by a different garage, who I’ll refer to as ‘S’, which was another one of its approved repairers. Mr W says that S found that the car was dangerous to drive. It found that the front facing road camera on his car wasn’t fitted correctly and that if left unrepaired, could have been very dangerous. S took around three weeks to repair the car.*

*During the time Mr W’s car was in for repairs, he was provided the use of a courtesy car (CC) by D. While the CC was in Mr W’s possession, the tyre punctured. Mr W called out for roadside assistance. The roadside assistance company suggested that the car was driven to get the tyre replaced, but Mr W said that he didn’t want to do this because he didn’t deem it safe, and so he called out a tyre repair place to change the tyre.*

*Once Mr W’s car had been repaired, he took the CC back to D. He requested that the CC was checked over while he was there, but this request was declined. Mr W later found out that D had put in a claim for some additional damage it said Mr W had caused to the car. It said that damage had been caused to the suspension and wheel trim.*

*Mr W strongly disputes the claim made against his policy by D. He says that there was no additional damage that had been caused. The tyre exploded while he was driving, he says that the road where the incident occurred was in good condition, and so couldn’t have been*

as a result of anything on or in the road.

Mr W says that Churchill have relied on false information when doing its investigation. He says that there wasn't ever a report done by the roadside assistance that could confirm any additional damage to the car – although Churchill had mentioned this report in some of its communication to him. Mr W also says that their investigation of the matter was weak, because they referred to the wrong roadside assistance provider.

Mr W isn't happy that the damage to the CC wasn't inspected in person by an independent engineer. And instead, the engineer inspected photos that they were sent by the D.

Mr W later received a letter from D demanding a payment of £600 excess – and if this wasn't paid, it would instruct debt collectors.

Churchill have sent Mr W a number of final responses in relation to his complaints. I will summarise what these said below:

- 12 March 2021 – Churchill responded to Mr W's complaint about additional mileage. Offered Mr W £25 to say sorry.
- 22 March 2021 – It responded to Mr W's complaint about the initial issues with the first repair – including the wet tar and additional dent to body work. Offered Mr W £250.
- 12 May 2021 – It responded to Mr W's complaint about the CC damage. This part of the complaint wasn't upheld by Churchill and said that it had used the information from the engineer when coming to its decision. It also said that it didn't feel that the garage being linked to the insurer was a conflict of interest.

However, it did uphold the issue about the investigation into the CC damage, and agreed it hadn't been carried out quickly and was dormant for approximately two months. It also said that it agreed to uphold Mr W's complaint about the repairs to his car that were carried out by D were unsafe. It offered Mr W £200 in total for these issues.

Our investigator looked into Mr W's complaint, but they didn't uphold it. They thought that it was fair of Churchill to have relied on the comments of the engineer when determining that it was more likely that Mr W had caused damage to the CC. And he felt that the compensation Churchill had offered for the other issues was fair.

Mr W didn't agree and so the complaint has been passed to me to make a decision on the matter.

### **What I've provisionally 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'd like to express my empathy for Mr W's situation. It's clear that he feels very strongly about his complaint. In reaching my conclusion, I don't wish in any way to downplay or disregard the situation Mr W has found himself in. Clearly, he's had a difficult time dealing with the issues he's faced as a result of the incident with his car.

But being independent means, I have to take a step back and consider what both parties have said. And I have to look to see if Churchill has acted fairly and reasonably when dealing with Mr W's claim, and the claim that was made against him.

*I think it's important to explain I've read and taken into account all of the information provided by both parties, in reaching my decision. Mr W and Churchill has sent this service a lot of information for me to consider during the course of this complaint. If I've not reflected something that's been said in this decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless it's relevant to the crux of the complaint.*

*The crux of Mr W's complaint appears to be that he is unhappy with the repairs carried out to his car by D. And he feels as though his dissatisfaction with those repairs has led D into pursuing a claim against his policy for the damage it says was caused to the CC. Mr W doesn't feel that Churchill has carried out a thorough enough investigation into the liability of the damage caused to the CC, and so he doesn't feel he should be liable to pay the £600 excess or have some of his no claims discount (NCD) removed.*

#### *Courtesy car damage*

*It isn't my role to determine who was liable for the damage caused to the CC; that would be a matter for a court of law. What I'm deciding is whether Churchill has acted in accordance with the terms and conditions of the policy and whether it has dealt with the claim fairly.*

*In line with most insurers, the policy says that Churchill can take over the settlement of the claim. So, it can decide whether to defend a claim or settle it. But it also needs to act fairly in deciding how to settle matters and so I've checked to see if it has made a reasonable assessment of the claim. And at the moment, I don't think it has.*

*It's probably worth noting here that D, Churchill's approved repairers, are the third-party in this claim – they are the owners of the CC. So, in these circumstances, where both parties have disputed liability of the damage, I'd have expected Churchill to have carried out an impartial and independent investigation into claim.*

*It's not in dispute that the tyre punctured while the CC was in Mr W's possession. But I don't think this necessarily means that Mr W caused the tyre to burst, or that the additional damage now reported by D was caused by Mr W or happened while he was in possession of the car.*

*Churchill appear to have held Mr W liable for the damage caused to the suspension and wheel trim of the CC because the tyre burst whilst Mr W was driving it. And it thinks that the impact of the tyre bursting has caused further damage to the car.*

*So firstly, I think Churchill needed to establish if the cause of the burst tyre is Mr W's responsibility.*

*In its final response to Mr W, Churchill said that it didn't know what caused the tyre to burst. It relied on some comments provided to it by D, when it said that it could have been down to a pot hole or large obstacle in the road. D said that the roadside assistance company told it that the road where the tyre burst was in poor condition. But other than D's testimony, I haven't seen any evidence which suggests this was the cause of the burst tyre, and I haven't seen any evidence from that roadside assistance company which confirms this. Mr W says the road was in good condition – and I can't see that Churchill investigated this point any further. So, without any evidence to support what either party has said, Churchill appear to have decided it likely that Mr W caused the burst tyre.*

*When Mr W first collected the CC, he was given a condition report where the existing*

damage to the car was marked on it. I can see from looking at this that there was, amongst other areas, some minor damage to the front left alloy (the same wheel that the tyre burst on). This existing damage appears to have been accepted by both parties.

Churchill has said that the mark on the alloy couldn't have caused the tyre to explode. It's said that there's no evidence to support this. But in my opinion, Churchill hasn't provided any reliable independent evidence that supports that the existing damage to the alloy wasn't the cause of the tyre bursting. I can see that it has asked for comments from its engineer about this point, but that engineer appears to have based its opinion on information provided by D. So I don't currently find that its investigation into this point has been independent.

I don't think there's enough independent evidence here to prove that Mr W caused the tyre to burst, which potentially caused further damage to the car. And I don't think there's enough evidence for Churchill to determine that the burst tyre wasn't caused by previous damage to the alloy.

The claim made against Mr W's policy by D, was for the damage that it said had been caused to the suspension and wheel trims. So I've looked at the evidence Churchill used when investigating the claim.

I can see from Churchill's notes that it's sent to us, that they've liaised with D about the further damage caused to the car. D told Churchill that the damage could only have been caused by the burst tyre, which it thought Mr W was at fault for. Churchill's engineer has relied on the information provided to them by D when deciding it likely that Mr W caused the damage to the CC. Given the dispute between D and Mr W, I don't think it would be fair of Churchill to only rely on D's comments about the damage sustained to the car.

I can see that D sent Churchill a report that confirms the repairs that would need to be carried out, and some photos of the car. And this was also taken into account by Churchill. But the repairs report and photos don't support D's comments that Mr W caused the damage.

Generally, in cases of liability, I'd expect the engineer to make an assessment as to what is most likely to have happened, based on the evidence it has seen. And I would usually think it fair of an insurer to place weight on the comments of an engineer, after all, they are expert in these matters.

However, in this case, the engineer's assessment appears to be based on the comments and conversations they had with D, who are the third-party claimant. There doesn't appear to have been any independent assessment of the CC carried out by Churchill. Because I hadn't seen anything of this nature, I asked Churchill for its engineers' comments on the cause of the damage; the engineer responded to say this was a 'tricky' case, and referred to comments about the damage provided by D.

But Mr W strongly disputes that he caused any additional damage to the CC. And he has tried to evidence this by providing Churchill with a letter from the tyre company who replaced the tyre. The letter says:

"We towed the vehicle to our yard, removed the wheel, inspected the vehicle on our ramp, fitted a new tyre and the car was 100% road worthy with no signs of any damage except a marked alloy wheel on which the tyre was fitted, the client advised that this alloy was already damaged prior to the tyre being replaced."

So, it appears that, in the opinion of the tyre repair company, there wasn't any obvious damage that had been caused to the car as a result of the burst tyre.

*I can see that Churchill thought about the report that was provided by Mr W, and it has said that a full check could have been carried out by the tyre repair company to check for further damage. But I don't see any reason why Mr W would have requested this. Especially given that the tyre repair company didn't think that there had been any other damage caused.*

*Mr W didn't report any issues with driving the car after the tyre had been replaced – which is possible he might have, had there been damage caused to the suspension and steering. Churchill has said that the car sustained moderate damage that might not always be noticeable when driving. But if this the case, then it's possible that the damage to the car could have already been present when Mr W collected it.*

*Because of this, I asked Churchill to provide any evidence of the checks that D carried out on the CC after it was last used, but it hasn't provided this. Had the CC been previously returned to D with damage to the alloy, then it would seem reasonable for it to have carried out some checks prior to it loaning the car to Mr W – but I haven't seen any evidence of this.*

*Based on everything that's been provided so far, the only independent piece of evidence I have seen in this case is from the tyre company that replaced the tyre. The letter provided by this company doesn't suggest that there were any issues with the CC.*

*While I appreciate that D say that damage was caused, at the moment, I don't think there's enough independent evidence to confirm the car was damaged and that Mr W caused that damage. It follows that I don't currently think Churchill carried out a thorough enough investigation into liability. And so it needs to put things right for Mr W.*

*I know Mr W feels very strongly about what Churchill and D said about the roadside assistance provider. In that, he was led to believe that the roadside assistance company had provided D with a report about the damage – which turned out not to be true. And Churchill continued to refer to the wrong roadside assistance company in its communications with Mr W. I think all parties have now accepted that there was no such report provided by the roadside assistance company. I can understand why Mr W would find this point suspicious, given that it feeds into his overall opinion that Churchill didn't do a thorough investigation. But at the moment, I don't think I need to comment on this point too much, because I'm already upholding this part of the complaint for the reasons I've stated above.*

#### *Other issues*

*There doesn't appear to be any dispute that the initial repairs that were carried out to Mr W's car weren't sufficient. And there isn't a dispute about the fact his car incurred increased mileage, marks on the bodywork or the fresh dent. So, I don't need to make a finding on these points.*

*But I do need to consider whether Churchill has done enough to put things right for Mr W in respect of these issues.*

*I have seen that the wet tar and dent were rectified by D – which is what I would have expected to happen. I can understand that it must have been disappointing for Mr W to arrive at D to see his car like this. Churchill has ensured that the repairs were carried out and paid £250 in respect of this part of Mr W's complaint, and I think this is fair in the circumstances.*

*Churchill accepted that the initial repairs carried out to Mr W's car weren't acceptable and offered Mr W £100 to say sorry for this. I can see that Churchill instructed a different approved repairer, S, to do these repairs – and Mr W is now happy with these. I'm pleased*

*to learn that there haven't been any dangerous consequences as a result of the initial poor repairs – it must have been shocking to understand what potentially could have gone wrong. However, I can't ask Churchill to compensate Mr W for what might have happened, and so I think the £100 it has already offered seems fair.*

*Churchill has also provided its comments as to the higher mileage on Mr W's car when he picked it up from the garage. Mr W is unhappy that someone has used his car without him agreeing to this. Churchill's explanation for this is that it was test driven and driven around the garage site. Without any other evidence that contradicts this, I'm minded accepting this. It's likely that a car would need to be driven to test it, while it's in for repairs. Churchill has agreed to pay £25 for this, and I think this is fair, given that there doesn't appear to be any evidence to show that the car was driven offsite for any other purpose.*

*In addition to what I've already said about the investigation into the claim made against Mr W in relation to the courtesy car, it appears that Churchill have accepted that it didn't do enough. And that it took too long to carry out the investigation. It has offered him £100 for this too. But at the moment, I don't think this is enough. Clearly Mr W has been through a difficult time dealing with this claim. I can see that he has been frustrated by Churchill accepting information from D that turned out not to be true. And there have been other issues along the way, for example, D demanding repayment of the excess directly from Mr W, when this should have all been dealt with by Churchill in the first instance. So I think Churchill should increase its offer by an additional £100 in respect of these issues.”*

Mr W responded to my provisional decision to say it accepted my findings.

However, Churchill didn't agree and made the below main points:

- The road where the incident happened was covered in potholes, which is most likely the reason the tyre burst. Churchill said this information was confirmed by the roadside assistance provider and they have no reason to doubt them.
- Mr W took the car to have the wheel replaced but didn't ask for it to be aligned. There's no report from the tyre company that supports the car was roadworthy.
- The garage has confirmed that the tyre would not have burst as a result of damage to the alloy. The scratched alloy would not cause a tyre to blow out.
- Churchill can't remove the claim because there's no dispute it happened.
- It doesn't agree to the increase in compensation given Mr W's conduct to the staff.

### **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 considered everything again, I will be upholding this complaint.

It's probably worth noting here that in this decision, I'm not saying that Mr W did or didn't cause the additional damage to the car. But I'm still of the opinion that Churchill didn't do enough to defend the claim made against Mr W, and instead it relied heavily on information it got from the garage, who are the third-party.

The information Churchill has relied on in relation to the condition of the road has been provided by the garage, which they say they got this from the roadside assistance provider. I haven't been given any evidence that supports what the garage have said they were told, like a call recording, or call notes from the time. Or that Churchill themselves attempted to contact the roadside assistance provider to clarify this. Mr W says the road was in good

condition. So, I don't think the condition of the road is clear here. And more could have been done to verify this.

I accept that there's no report that's been provided by the tyre company, but I wouldn't have expected Mr W to know to obtain something like this at the time. Or to request an alignment check. The letter confirms that the car was roadworthy. And Churchill hasn't been able to provide me anything independent of what the garage has said to show it wasn't.

I don't think it's in dispute that the mark on the alloy was a scratch. But any damage to an alloy could potentially cause other issues. I asked Churchill to provide me with any evidence it has to show that the suspension and wheel alignment were fine before Mr W used the car, but it hasn't given me anything to show this.

The increase in compensation I recommended was because of the issues I've mentioned with the claim handling. I'm not minded reducing this based on conflict that happened at the garage.

Based on the above, I still think that this complaint should be upheld.

### **Putting things right**

Based on everything I've seen; I think Churchill should do the below to put things right for Mr W.

- Increase the compensation award to Mr W by £100. So, it needs to pay Mr W £575 in total. It can deduct any payments it has already made to Mr W off this amount.
- Remove the costs associated with the claim made against Mr W's policy for the CC. This means that Mr W shouldn't be liable to pay £600 excess, have his NCD affected and the claim should be reported as 'notification only' on any internal or external databases.

### **My final decision**

For the reasons set out above, I uphold Mr S's complaint. U K Insurance Limited trading as Churchill Insurance should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 March 2022.

Sophie Wilkinson  
**Ombudsman**