

The complaint

Mr B and his wife Miss M complain that Acromas Insurance Company Limited mishandled a claim on his motor insurance policy.

Where I refer to Acromas, I include claims-handlers and others insofar as I hold Acromas responsible for their acts or omissions.

What happened

Mr B had a luxury sports utility vehicle with a British registration and with right-hand drive. For the year from early February 2019, Mr B had the vehicle insured on a comprehensive policy with Acromas. He was the policyholder. The policy covered his wife to drive the vehicle. Any claim for damage was subject to a policy excess.

In late March 2019, Mr B and his wife had taken the vehicle to France. He reported that – while they were stationary in his vehicle – a low-loader lorry had scraped down the passenger side of his vehicle.

Acromas repaired Mr B's vehicle and he had to pay the policy excess.

In September 2019, Acromas wrote a letter to Mr B. It said that it considered that the claim would be best settled with both parties accepting partial liability.

Mr B made a complaint to Acromas (which I will refer to as his previous complaint) about lack of progress and poor communication. Acromas wrote a final response letter dated 29 December 2019. It said it was paying Mr B £50.00 for failing to return a call. It said that the most probable outcome of the claim was that liability would be shared 50/50. Mr B brought his previous complaint to us.

One of my colleagues wrote a final decision in January 2021 about service up to 29 December 2019. She directed Acromas to pay Mr B £100.00 for distress and inconvenience. She said that If Mr B wanted to complain about service after that date, a new complaint needed to be made to Acromas. She said that, as the claim hadn't been settled at the time of Acromas' response to his complaint, she couldn't consider its decision on liability.

In March 2021, Mr B complained to Acromas that it had told him that - because the lorry driver denied any knowledge of the reported incident - it had closed Mr B's claim in November 2020 as a fault claim against him. I will refer to that as his current complaint.

By a letter dated early March 2021, Acromas told Mr B of his right to bring his current complaint to us – which he did in early May 2021.

our investigator's opinion

Our investigator recommended that the complaint should be upheld. He said that – despite reminders – Acromas hadn't sent us any information. He thought that there was no evidence that Acromas did anything to investigate who was at fault for the incident. So he

recommended that Acromas should:

1. update the way the claim is recorded on the insurance database to reflect that Mr B wasn't at fault; and
2. reimburse Mr B's policy excess of £500.00; and
3. pay Mr B £200.00 in compensation for the distress and inconvenience caused by the continued poor service since the final decision on the previous complaint.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr B and Miss M and to Acromas on 28 March 2022. I summarise my findings:

I wasn't satisfied that Acromas did a reasonable and proportionate investigation into the question of liability for the accident. So I considered that Acromas deprived itself of the opportunity of recovering its outlay in full from the third party. And I wasn't satisfied that Acromas treated Mr B fairly by recording a fault claim against him.

I found it more likely than not that Acromas caused Mr B a financial loss of £550.00 in respect of the policy excess. I was minded to find it fair and reasonable to direct Acromas to reimburse Mr B that amount. As he will have been out of pocket, I was minded to find it fair and reasonable to direct Acromas to add interest at our usual rate since the date of the accident.

In addition to the policy excess, I was minded that Acromas had caused Mr B distress and inconvenience. Since the investigator's view, Acromas had made things worse by its continued lack of response. For about a year since March 2021, Acromas has caused Mr B a feeling that Acromas was ignoring him – and more recently the Financial Ombudsman Service.

Subject to any further information from Mr B and Miss M or from Acromas, my provisional decision was to uphold this complaint. I intended to direct Acromas Insurance Company Limited to:

1. write a letter to Mr B saying that it unfairly recorded the claim from late March 2019 as a fault claim against him, and that it has removed the fault claim from its records and from any external database on which it had recorded that claim; and
2. reimburse Mr B the policy excess of £550.00; and
3. pay Mr B simple interest on £550.00 at the yearly rate of 8% from 26 March 2019 until the date of reimbursement. If Acromas considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr B how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate; and
4. pay Mr B and Miss M (jointly) £350.00 for distress and inconvenience.

Mr B and Miss M say they have no further information to add in response to the provisional decision.

Acromas hasn't responded to the 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.

I've reviewed the information we hold on the previous complaint to see if it is relevant to the current complaint.

When a policyholder has made a claim and an insurance company has made an outlay (for example to repair its policyholder's vehicle), it's common for that insurance company to treat the claim as a "fault" claim against its policyholder unless and until the insurance company recovers its outlay in full (typically from a third party's insurance company).

So a "fault" claim doesn't necessarily mean the policyholder was responsible for causing the accident.

Where the insurance company agrees with a third party's insurance company that liability is split (for example 50/50) between its policyholder and the third party, then each insurance company will recover only part (for example 50%) of its outlay.

Most motor insurance policies contain a term giving the insurance company the right to control of any claim against a third party. The effect of such a term is that – on a question of liability – the insurance company's view will prevail over its policyholder's view. The Financial Ombudsman Service may consider whether an insurance company has applied such a term fairly.

From Mr A's policy schedule, I see that the total of compulsory and voluntary excesses was £550.00. So I find it likely that Mr B paid that amount but mis-remembered it as £500.00.

I've thought about what I would expect from Acromas in a reasonable investigation of the claim.

I would expect Acromas to consider the statements of Mr B and Miss M. I would also expect Acromas to consider the nature and location of the damage to Mr B's vehicle – and whether it was consistent with the statements.

Faced with a denial that the low-loader was involved in the accident I would expect Acromas to ask where it was based, and to ask for evidence of its location at the time of the accident. I would also expect Acromas to obtain and share with Mr A a full explanation of the relevant traffic signs and rules applying to the accident.

I would also expect that after Mr B made his current complaint, Acromas would send a final response giving reasons for its conclusion that the complaint had been resolved.

I would also expect Acromas to cooperate with our investigation.

In the absence – despite reminders - of any response from Acromas, I'm not satisfied that Acromas did a reasonable and proportionate investigation into the question of liability for the accident. So I consider that Acromas deprived itself of the opportunity of recovering its outlay in full from the third party. And I'm not satisfied that Acromas treated Mr B fairly by recording a fault claim against him.

We don't assess compensation at a level to punish or deter shortcomings by regulated

financial firms. Rather we look to compensate the impact on the complainant.

Putting things right

I've thought about how to try to put things right between Mr B and Acromas at this stage.

I find it more likely than not that Acromas caused Mr B a financial loss of £550.00 in respect of the policy excess. I find it fair and reasonable to direct Acromas to reimburse Mr B that amount. As he will have been out of pocket, I find it fair and reasonable to direct Acromas to add interest at our usual rate since the date of the accident.

Mr B had a protected no-claims discount. He hasn't been able to show that the fault claim caused him to pay an identifiable amount more for insurance than if the claim had been a no-fault claim. So I'm not persuaded that Acromas caused him a financial loss in that respect.

However, I find it fair and reasonable to direct Acromas to write a letter to Mr B (which he may show to current or future insurers) saying that it unfairly recorded the claim from late March 2019 as a fault claim against him, and that it has removed the fault claim from its records and from any external database on which it had recorded it.

In addition to the policy excess, I find that Acromas has caused Mr B distress and inconvenience. Since the investigator's view, Acromas has made things worse by its continued lack of response. For about a year since March 2021, Acromas has caused Mr B a feeling that Acromas was ignoring him – and more recently the Financial Ombudsman Service.

Mr A has had to keep contacting us while we afforded Acromas plenty of time to respond. In the usual course of things, I find it likely that Miss M has had a shared experience of Mr B's frustration.

So I find it fair and reasonable to direct Acromas to pay Mr B and jointly Miss M £350.00 for distress and inconvenience.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint. I direct Acromas Insurance Company Limited to:

1. write a letter to Mr B saying that it unfairly recorded the claim from late March 2019 as a fault claim against him, and that it has removed the fault claim from its records and from any external database on which it had recorded that claim; and
2. reimburse Mr B the policy excess of £550.00; and
3. pay Mr B simple interest on £550.00 at the yearly rate of 8% from 26 March 2019 until the date of reimbursement. If Acromas considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr B how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate; and
4. pay Mr B and Miss M (jointly) £350.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss M to accept or reject my decision before 25 May 2022.

Christopher Gilbert

Ombudsman