

The complaint

Ms M complains UK Insurance trading as Direct Line (UK Insurance) caused damage to her car when recovering it after it was driven off the road; incorrectly dealt with the incident as a claim on her motor insurance policy instead of her breakdown policy; and didn't offer her a fair value for her car. She's also unhappy with the overall service received.

All references to UK Insurance include its agents.

What happened

Ms M took out a motor insurance policy and a separate breakdown policy with UK Insurance. Around February 2021, she called UK Insurance for assistance as her car had driven off the road into a bank of snow. She's since explained the area it was driven into was a car park. UK Insurance has given us a recording of when Ms M called to report the incident.

The recovery agent towed Ms M's car off the snowbank. After investigating the damage, UK Insurance decided to write off the car as it would cost too much to repair. It offered Ms M around £1,760 as the market value of the car less any excess on the policy.

Ms M rejected this offer. She said the damage to her car was caused during the recovery as the agent put too much force on the back of it. So she thought UK Insurance should cover the cost of repairing the car without her needing to make a claim. She also said it would cost her much more to replace her car than it'd offered.

UK Insurance arranged for engineers to look at the damage to Ms M's car, it seems this was done via photos and videos. In its initial response in February 2021, it said the engineers were unable to determine whether the damage to Ms M's car was caused by the recovery or driving off the road. It highlighted that it would expect damage to the tow bar and elements connected to it if the recovery was carried out unprofessionally. In a later response it said the damage wasn't consistent with a car being towed so it didn't agree to put things right in the way Ms M wanted. UK Insurance did however offer Ms M a total of £175 as compensation for the poor customer service she said she'd received and the delay in giving her a hire car.

Unhappy with UK Insurance's responses, Ms M asked our service to look into things. Our investigator didn't uphold her complaint as she didn't think there was enough evidence to say the damage happened when the car was being towed. And she thought the valuation UK Insurance had reached was fair considering the condition and mileage of the car. Ms M didn't accept our investigator's opinion so the case was passed to me to decide.

I spoke to the garages that inspected Ms M's car. I'll call the initial garage the car was recovered to at Ms M's request "M" and a second garage it was later moved to, "H". It seems M inspected the car in full whilst H carried out a more basic inspection.

I issued a provisional decision on this complaint in March 2022. I thought the complaint should be upheld in part in summary because:

- From what the garages said, it seemed the damage to Ms M's car was consistent with being towed rather than the incident which would've needed to have been a big impact.
- I thought it was unlikely there was a big impact during the incident as the car wasn't in a ditch, the land was flat and I couldn't see obstacles or damage to the front of the car.
- I wasn't satisfied UK Insurance had shown it's more likely the damage was caused when the car was driven off the road rather than when it was towed as Ms M claims.
- I didn't think UK Insurance should've dealt with what happened as a claim on Ms M's motor policy. Had it not, I was persuaded Ms M wouldn't have claimed for the incident.
- I didn't think it would be reasonable to direct UK Insurance to cover the cost of repairing Ms M's car or getting a new one as these costs far exceeded its value. Instead, I thought it should write off her car and pay her the market value without treating it as a claim.
- I thought mileage was an important factor when determining the market value of a car. And it wasn't unreasonable for UK Insurance to use trade guides to work out the estimated value. So UK Insurance's offer was reasonable.
- UK Insurance had caused Ms M upset, confusion, frustration and I didn't think she would've felt listened to. She was also left without a car for 10 days. If UK Insurance had listened, things could've been resolved sooner. So I didn't think its offer made up for this.
- I directed Ms M to provide evidence of her alternative travel arrangements if she'd been left without a car since the date her hire car had been returned.

To put things right, I directed UK Insurance to put Ms M in the position she would've been in if it hadn't dealt with what had happened as a claim on her policy; give her a letter to share with other insurers to show the incident shouldn't have been recorded as a claim; pay the market value of her car plus 8% interest and pay her a further £500 compensation to make up for the distress and inconvenience caused to her.

I asked both parties to make any further comments before the deadline set out in my decision.

UK Insurance didn't accept my provisional decision. It said in summary:

- It was never given reports from Ms M's repairers to dispute its engineer's findings.
- The reason Ms M needed to be recovered wasn't covered under the terms of the breakdown policy as it wasn't a mechanical fault.
- Ms M's breakdown terms say costs usually covered by a motor policy wouldn't be covered by the breakdown policy.
- When Ms M first called UK Insurance, she said she was stuck and the car wouldn't drive. It says this suggests the incident damaged the car and the motor policy applies.
- Whilst the definition of 'breakdown' in the breakdown policy includes getting stuck in snow, the circumstances of Ms M's incident wouldn't be classed as a breakdown. An example of what would be is if the car couldn't get up a snowy hill.

- Ms M losing control of her car in snowy conditions is a single vehicle incident that isn't covered under her breakdown policy.

Ms M didn't say whether she accepted or rejected my provisional decision. But she provided further information and documentation for me to consider. She said in summary:

- UK Insurance didn't close her claim in March 2021 and it's showing on her policy.
- She returned the hire car in April 2021 and she wasn't given an alternative.
- She is unable to find another car for the amount UK Insurance has offered – nor has she been able to negotiate sellers down to that price.
- UK Insurance should cover the cost of delivering her a new car.
- She would like to keep her car and doesn't think she should have to pay return costs.
- Her car shouldn't have been written off as it can be repaired.
- She paid for her policy to be renewed when she's been unable to use her car. And her car was confirmed as statutory off road (SORN) on 1 August 2021.
- UK Insurance should cover the cost of moving Ms M's car to H, H's inspection and the cost of delivering it back to her afterwards. This totals £342.30.

In September 2022, I wrote to both parties again to explain I still thought the complaint should be upheld in part. In summary I thought:

- UK Insurance could've asked for more information from M and H itself. And in any event, from its actions, I didn't think it would've acted differently if it had seen their reports.
- There wasn't anything in the terms to support UK Insurance's view that getting stuck in the snow only met the definition of a breakdown in specific circumstances.
- Ms M's explanation for why she said her car wouldn't drive at the time of reporting the incident was plausible.
- Ms M would've needed to pay for her motor policy until the end of its term. And she needed fire and theft cover at a minimum after declaring her car SORN.
- I couldn't consider the costs Ms M had suggested she had for alternative travel arrangements as she hadn't provided evidence or details of it.
- UK Insurance didn't need to cover the cost of moving Ms M's car to H or the second inspection as it didn't direct her to do this and it had already declared the car a total loss.
- It was fair for UK Insurance to rely on trade guides to work out the estimated market value of Ms M's car and I thought the value offered was fair.
- The cost of delivering a new car to Ms M would be one she'd eventually have to cover anyway. And the compensation goes some way to make up for the inconvenience.
- It's usual for insurers to keep damaged items when they pay out for a total loss. But as UK Insurance has allowed Ms M to buy back her car, it's fair for it to charge her.

- The decision to classify the car as uneconomical to repair is fair considering the damage described to me by M and H and the likely cost of repair compared to the market value.

I asked both parties to make any further comments before the deadline. Ms M accepted my provisional decision in part. She said the car is insured and she hasn't been paid the settlement. She reiterated the incident wasn't her fault and the cost of moving the car and the inspection should be covered as both we and UK Insurance suggested she'd need another inspection. She also said she wants to keep her car without paying return costs.

UK Insurance provided comments from an engineer who said whilst the damage is difficult to prove either way, accelerating forward (when skidding off the road) before coming to an abrupt stop could have caused the damage and snapped the shaft. Whereas pulling the car slowly backwards shouldn't have caused the damage claimed. It said it had provided evidence it should be dealt with as an accident on the policy which is supported by Ms M saying the car wasn't driving when she reported the incident.

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 reconsidered the complaint based on the responses I've received. I'd like to take this time to thank both parties for their patience while I have been looking into things. I still think this complaint should be upheld in part.

I know Ms M feels strongly that UK Insurance should cover the cost of transporting her car to and from H and the inspection it carried out. And I can see she's highlighted both UK Insurance and our investigator suggested she'd need a further inspection. But I can't see where UK Insurance directed her to get another report. And H's inspection took place before our investigator suggested she'd need further evidence – and wasn't as a result of our what our investigator said. So I'm satisfied Ms M chose to move her car to H and get a further inspection. And I don't think it made a material difference to the outcome of her complaint.

Ms M doesn't think she should have to pay the costs for keeping her car. But it's not unusual for insurers to charge a fee when policyholders want to keep their car after it's been declared a total loss. And I don't think the amount quoted in this case is unreasonable.

UK Insurance has provided further comments from an engineer saying the car coming to an abrupt stop after skidding likely caused the damage. But the engineer has said it's difficult to prove how the damage was caused, it doesn't seem he physically inspected the car (unlike M and H) and he's given very little detail. I also note, the reasoning UK Insurance has given to support its view has varied throughout the complaint. So this doesn't change my decision.

Putting things right

To put things right in this case UK Insurance should:

- Put Ms M in the position she would've been in if it hadn't dealt with what happened as a claim on her motor insurance policy but a notification only. So that means it'll need to remove any record of the claim and refund any excesses she's been charged.
- I understand the price of other policies Ms M holds with UK Insurance have increased upon renewal due to this being treated as a claim. So I think it should refund the difference between what she's been charged for those policies and what she would've been charged if this incident hadn't been recorded as a claim.

- Pay Ms M the difference between what she would've paid for fire and theft cover only and the amount she's paid for her motor insurance policy since declaring her car SORN.
- Add 8% simple interest to the above amounts from the dates Ms M paid the excess; for her other policies; and her motor insurance premium until the date of settlement.*
- Provide Ms M with evidence – for example a letter – to share with her other insurance providers showing this incident shouldn't have been recorded as a claim for them to adjust the price of any other policies she has where relevant.
- Arrange for the collection of Ms M's car at a convenient time and date for her if she doesn't want to keep it.
- Pay Ms M £1,760 as the market value of her car if this hasn't been paid already. It should add 8% simple interest on that amount from the date of the initial valuation until the date of settlement*. If Ms M wants to keep the car, UK Insurance can deduct the salvage return cost it's already quoted to Ms M.
- Pay Ms M a further £500 as compensation to make up for the distress and inconvenience it's caused her. This is in addition to the £175 it's already offered her. So, in total, it will have paid £675 as compensation.

*If UK Insurance considers it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Ms M how much it's taken off. It should also give Ms M a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs.

My final decision

For the reasons I've given, I uphold this complaint in part and direct UK Insurance trading as Direct Line to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 5 December 2022.

Nadya Neve
Ombudsman