

The complaint

Mrs R had motor insurance underwritten by U K Insurance Limited trading as Churchill Insurance (UKI). She complains about how UKI dealt with a claim on her policy.

What happened

Mrs R's car was involved in an accident. UKI, on the advice of its engineer, decided the vehicle was beyond economical repair and would be dealt with as a total loss. UKI wrote to Mrs R saying it would pay her the market value of the car. The letter asked Mrs R to return the vehicle registration documents to the DVLA and UKI, and said:

"We have moved the vehicle to safe storage and we would like to dispose of it. We will contact you to make sure you have received your settlement payment and obtain your agreement to the disposal."

UKI then paid Mrs R what it considered to be the market value of the car. Mrs R returned the vehicle registration documents, transferring the ownership to UKI as requested.

Some months later, Mrs R contacted UKI to ask when she had to make a decision about what to do with the car. UKI told her it had already been disposed of as the car became its property once the claim was paid.

Mrs R wasn't happy with this and complained to UKI. UKI upheld her complaint, apologised and paid her £300 compensation. UKI accepted that Mrs R hadn't been told the correct process for buying back the car, and it hadn't followed the process set out in its letter. UKI also accepted that Mrs R had had a poor response to her initial enquiry asking when she had to decide about the car, and said it had given feedback to the relevant teams.

Mrs R wasn't happy with this response and complained to this service. Our investigator upheld her complaint. She said UKI had made mistakes in the way it dealt with Mrs R's claim and should pay her a further £200 in recognition of the inconvenience and upset caused.

Neither UKI nor Mrs R agreed with the investigator's suggestion, so the complaint has been passed to me. Mrs R wants to be compensated for her financial loss, which she says she is unable to quantify.

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 don't uphold Mrs R's complaint. I'll explain why.

On 15 June 2022 I issued a provisional decision. My provisional decision said:

I don't intend to uphold Mrs R's complaint. I'll explain why.

Mrs R's car insurance policy booklet said:

“If your car is damaged, we have the option to:

- Pay to repair the damage or repair the damage ourselves;*
- Replace what is lost or damaged, if this is more cost-effective than repairing it; or*
- Settle your claim by sending you a cheque or by bank transfer...*

If your car is uneconomical to repair (written off)...[o]nce we settle your claim, your car will become our property and you must send us the registration document.”

There is no mention of the policyholder being able to buy the car back, but this isn't unusual. We would usually expect an insurer to agree to a consumer keeping their car if asked. The insurer would then usually pay the policyholder the market value of the car less an amount for 'salvage'. This is because the car, even if a total loss, will still have some value.

Mrs R returned the registration documents for the car and accepted the payment from UKI in settlement of her claim. According to her policy booklet this meant the car became UKI's property. UKI sent her a letter saying it would like to dispose of it. However, UKI also said it would contact her to obtain her agreement to the disposal and it didn't do so.

Mrs R didn't contact UKI about the car until some months after it paid the claim and she had bought a new car. UKI says that before this she hadn't expressed any interest in keeping the car. There is no recording of the discussions Mrs R had with UKI's engineer and whether she said she wanted to keep the car, but the engineer recorded she had given authority for it to be disposed of.

UKI acted in accordance with the terms of Mrs R's policy. However the letter it sent her did contain incorrect information. UKI has accepted that Mrs R wasn't told the correct process for buying the car back and that it didn't follow the process outlined in its letter either. Mrs R is unable to say by how much, if anything, she might be out of pocket. So I can't ask UKI to compensate her for this. UKI has paid Mrs R £300, which it says was to say sorry for the upset and worry caused. I think this was a fair and reasonable way to resolve her complaint in all the circumstances.

My provisional decision

For the reasons given above, I don't intend to uphold Mrs R's complaint. So I won't be asking U K Insurance Limited trading as Churchill Insurance to do anything.

Responses to my provisional decision

UKI didn't respond to my provisional decision.

Mrs R said:

“We are obviously very disappointed by the provisional decision. I would be grateful if the following important matters could be taken into account in any final decision. However, as a general reflection, the provisional decision feels very much as if we are being blamed for the failures of UK Insurance (UKI) and this is extremely concerning because on an examination of the facts of the case demonstrates that the opposite is true.

Context and timescale of the claim

The provisional decision states that we waited several months before contacting UKI about

the car, after UKI paid the claim and we had bought a new car. It is important to see this timescale in the context of the claim as a whole. The accident occurred on 4 August 2021. The matter remains unresolved insofar as liability has yet to be established. So we are nearly 12 months from the accident and the matter is not resolved. This timescale is the context in which any of our actions must be seen when attributing them weight in your decision.

When we first contacted UKI following the accident it was explained to us at some length, and on several further occasions, that because staff were working from home there would be considerable delays dealing with our claim, delays getting through on the telephone and delays replying to emails.

Taking the above context into account, the various delays and the management of expectations in terms of timescale that UKI practised throughout this period, it did not occur to us at any point that we should be chasing the matter up, particularly as we had an assurance in writing that we would be contacted prior to the car being disposed of.

It took more than two weeks to receive a settlement so that we could start the process of buying a new car and in that time we spent a significant sum on a hire car. Delay was and continues to be an inherent part of the process.

We contacted UKI next on 5 November. This was a little over two months from their original settlement letter. In the context of the timescale of the overall claim, the delays we had experienced and the expectations we had been given about timescale throughout the process it is unreasonable in our view to arbitrarily decide that we should have followed-up the matter within a certain period or to attribute this weight in your decision, because it ignores the overall timescale of the claim and the level of expectation about timescale which we had been given by UKI. Furthermore, we consider that characterising a period of a little over two months as "several months" and again seemingly attributing this weight in the decision is unfair.

The provisional decision states that we returned the registration documents for the car and accepted the payment from UKI in settlement of the claim. Again, the implication here is that we are at fault. We have already explained on several occasions how important it was to us to have a replacement car as soon as possible, so of course we accepted the settlement at the earliest opportunity. Clearly had we been told at any stage by UKI that to do this was to somehow absolve them of their commitment to contact us before disposing of our car, set out in the very same letter where the settlement was confirmed, then we would have acted differently.

We are clear what we asked the engineer and were told clearly that we would be able to keep our car and we assumed, wrongly, that this conversation plus the written assurance we subsequently received was sufficient. UKI do not have a record of these conversations but again it feels very much as if we are being blamed for their failings. We did not record the conversations, because what reasonable person would think that that was a necessary course of action?

Finally and most importantly with regard to timescale, it is clear from correspondence that UKI waited an entirely arbitrary period of time before disposing of our vehicle, without seeking the agreement of ours that they had committed to. Had we, as the provisional decision implies we should have done, contacted UKI earlier, it does not seem like the outcome would have been any different because the vehicle would already have been disposed of. I am attaching correspondence not previously provided, in which UKI state that the vehicle was disposed of on 14 September – only 13 working days after committing to agreeing the disposal of the vehicle with us.

The implication of your provisional decision is that we basically waited too long to get back in touch with UKI to agree to keep our vehicle. However, it had actually been disposed of three weeks after their letter and therefore any delay on our part, perceived or otherwise, is academic, because the car has already been disposed of.

The question then becomes; was it reasonable to write to us committing to seeking our agreement to dispose of the car to then, only three weeks later, dispose of the car without getting in touch with us or having heard from us?

Cost of repair

The provisional decision also appears to attribute weight to our inability to evidence by how much we are out of pocket. I believe this is unfair and unreasonable.

We can provide you with evidence of the cost of the current value of the make, model and year of our car. We cannot provide you with evidence of how much it would have cost to repair because UKI disposed of the car without our agreement. It is unreasonable to expect us to be able provide such evidence because the actions of UKI have deprived us of the ability to do so.

A simple search of the DVLA website reveals the car is now back on the road. So it was repaired and someone knows how much this cost, be that UKI or a third party. If the ombudsman considers this information material to the decision, and the provisional decision implies that it does, then it is information that is available to UKI and to the ombudsman.

Precedent

If the provisional conclusion of this complaint becomes a formal decision of the ombudsman it sets a concerning precedent for the actions or lack of actions of large insurance companies and their impunity from consequence as a result. In this case UKI have committed in writing, to a course of action to one of their customers which they, as a matter of fact and their own admission, failed to carry out.

I understand the general point that the policy wording is the definitive test of what UKI commit to do or not do. However, the implication is that they can commit to anything they like in associated correspondence but not be held accountable to that in any way.

In summary, we believe that the ombudsman has unreasonably sided with UKI in this case, in the face of the facts. And where matters are open to interpretation, they have sided with UKI on every matter, without evidence for doing so and arguably with evidence that suggests to the contrary."

I have considered Mrs R's comments very carefully. I want to reassure Mrs R that I have seen the letter she mentioned in her response. I agree with Mrs R that UKI made mistakes in dealing with her claim. But UKI has accepted its mistakes, apologised to Mrs R, and paid her £300 compensation. I think in all the circumstances this was a fair and reasonable way to resolve her complaint. So I won't be changing my provisional decision.

My final decision

For the reasons given above I don't uphold Mrs R's complaint. So I won't be asking U K Insurance Limited trading as Churchill Insurance to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 5 September 2022.

Sarah Baalham
Ombudsman