

The complaint

Mr M complains about how Automobile Association Insurance Services Limited (AAISL) dealt with his claim following an accident in his car.

What happened

Mr M's car was hit in the rear by another driver. At the time of the accident a passer-by helped Mr M as he was in shock following the accident. Mr M provided the passer-by with the "claims" phone number to call in the event of an accident.

While the passer-by was on the phone the Police arrived at the scene and said they would recover Mr M's car. The Police also arranged a taxi for Mr M. The passer-by was told in the call that Mr M should get a receipt for the taxi so he could look at claiming it back later.

Later that day, Mr M called the "claims" phone number again. Mr M's call went through to a third-party company who appear to handle these calls on AAISL's behalf. During the call Mr M was told he could either claim through his policy or use the services of an accident management company (AMC). Mr M chose to use the AMC for what is known as credit hire and repair.

After Mr M's car had been recovered and repaired, he complained to AAISL about the poor claim handling and lack of recovery by his insurer. He said they should have handled things better and didn't think it was right his insurer hadn't helped him more when he had the accident. AAISL said Mr M would need to speak with his insurer as it would be responsible for the claim and directed Mr M to who it said his car insurer was. The insurer AAISL told Mr M to contact explained it had never dealt with a claim but had been made aware of the incident.

In AAISL's final response letter it said it didn't think it had done anything wrong with the lack of recovery. It said that Mr M had been able to recover the cost of the taxi he had paid to take him home from the accident. However, AAISL did acknowledge other aspects of its communication could have been better and said it could have showed more empathy and acknowledged its lack of contact. Because of this AAISL offered £60 compensation. Mr M rejected this and instead AAISL arranged to send him a gift. Unhappy with AAISL's response Mr M referred his complaint here.

I issued a provisional decision on 6 February 2023 where I said:

"Responsibilities of AAISL"

Before I address the merits of this complaint, I think it's first important to set out the different parties involved and AAISL's responsibilities, to make clear what I can and cannot look at in this decision.

I've listened to the calls Mr M and the passer-by made; these are both answered by a different business to AAISL, who I'll refer to as a claims handling company (CHC). As Mr M called the number provided in his policy for making a claim, it therefore appears the CHC

has been appointed by AAISL to log customer claims and explain customers' claim options. So, when Mr M called AAISL to report the damage to his car, he was automatically transferred to the CHC to handle the call on AAISL's behalf. This means the CHC was acting as AAISL's agent and AAISL is responsible for the CHC's actions or omissions during this call when it discussed Mr M's claim options and referred him to the AMC for credit hire and repair.

However, AAISL's responsibility for the CHC is limited to when they were acting on AAISL's behalf - and AAISL is not directly responsible for any actions or omissions of the AMC. In other words, the AMC was acting in its own capacity, or another legal entity, when handling Mr M's claim – not on behalf of AAISL.

So, to be clear, I am only considering what happened during the calls between Mr M (and the passer-by) and the CHC (acting on AAISL's behalf) when he was referred to the AMC for credit hire and repair, and whether the CHC, as AAISL's agent, met the required standards.

The relevant regulatory and other requirements

As Mr M's insurance broker, AAISL was obliged to provide Mr M with information that was clear, fair and not misleading, in line with its obligations under Principle 7 of the FCA Handbook: Communications with clients (see PRIN 2.1R The Principles) and ICOBS 2.2.2R (Clear, fair and not misleading rule). In the circumstances of this case, this means that when Mr M contacted AAISL via the passer-by and himself to tell it about his 'non-fault' claim for damage to his car, AAISL ought to have provided him with clear information about his options, so he could decide how best to proceed with getting his car repaired.

I appreciate AAISL appointed the CHC to fulfil this task on its behalf, and I don't think there's anything wrong in appointing a third party to do this. But, in line with ICOBS 2.5.3G, a firm cannot delegate its responsibility under the regulatory system when relying on others – it retains regulatory responsibility for achieving the outcome required. This means AAISL is ultimately still responsible for making sure its regulatory obligations are met by any third parties acting on its behalf.

Under Principle 6 (PRIN 2.1R) AAISL was also required to pay due regard to the interests of Mr M as its customer and treat him fairly. And in line with the Customer's best interests rule under ICOBS 2.5.-1R, AAISL was required to act honestly, fairly, and professionally in accordance with the best interests of its customer. And, if any recommendations were made, AAISL was required to take reasonable care to ensure the suitability of its advice, in line with Principle 9 (PRIN2.1R).

If I find the CHC didn't meet these regulatory requirements during the calls when it referred Mr M to the AMC ("the referral calls"), then AAISL would be held responsible.

The referral calls

I've reviewed the contents of the calls and considered whether the CHC met the relevant regulatory requirements when acting on AAISL's behalf.

For context, it's important to note that in the first call the passer-by was trying to arrange recovery and a taxi for Mr M. During the call they were advised that Mr M would need to arrange a taxi for himself, as this is something his policy doesn't cover. But the passer-by was told that Mr M should get a receipt so he can claim it back. Which I understand he has done. During the call the Police also attend the scene and say they will arrange recovery. So, while there are aspects of this call where I'm not satisfied the passer-by was made aware Mr M was being referred to an AMC, there is also a second call later that day.

During the second call where Mr M was referred to the AMC, he was told that he could claim on his motor insurance policy where he would need to pay his excess and only be entitled to a one litre courtesy car as standard. The advisor then goes on to say the AAISL can:

“Offer you at no additional cost to yourself a policy which provides you with a guarantee that you don’t need to pay your excess, the cost of repairs won’t make a claim against your motor insurance policy, and a similar specification hire vehicle during the duration of the repairs. Okay, so the second option is more beneficial as it gives you a little bit more protection and there’s no fees to yourself as we cover this. The only thing I will mention is that it’s your name on the invoice, but you don’t need to pay this as it’s all covered by us.”

The advisor then asks if Mr M would like to proceed with the second option and Mr M responds to say he’s confused. He then asks if AAISL is giving him a policy to protect the £400 he’ll have to pay out. I assume Mr M is referring to his excess here as that is what the excess is on his motor insurance policy. The advisor then goes on and explains this policy is a protection for his excess and that every claim makes a “dent” on his motor insurance policy so this one prevents the need for claiming on Mr M’s motor insurance policy and says that it is a separate policy which just covers this incident. Mr M then agrees to proceed with being referred to the AMC. At the same time AAISL then sets up this other insurance policy to cover the repair costs and hire car costs in the event those costs can’t be recovered from the third party’s insurer.

Although the call handler told Mr M that he could claim through his own motor insurance policy, I’m not persuaded they presented his options clearly and fairly – especially as I’ve noted that Mr M had motor legal assistance as part of his car insurance policy and also had two add on policies. One for a hire car and the other was an excess protection policy. In fact, Mr M may have been able to claim his excess back from the third party’s insurer as an uninsured loss, even if he chose to claim through his own insurance policy. And although any unprotected no claims bonus (NCB) may be affected temporarily by an open or outstanding claim on a policy, if a claim is closed as ‘non-fault’ then the NCB isn’t affected in the long run.

So when taking the calls into account I’m satisfied AAISL didn’t do as it should have so Mr M could make an informed choice about whether to use the AMC and take out this additional insurance policy or claim on his motor insurance policy.

I’ve therefore looked at what I think would have happened if AAISL had given Mr M the information needed for him to make an informed choice. When looking at Mr M’s complaint he’s raised frustration about not using his motor insurance policy when he needed it. I’m therefore satisfied that if Mr M had been given sufficient information, he wouldn’t have used the AMC or taken out this additional insurance policy.

When looking at the impact of the poor referral and sale, I’ve considered that the additional insurance policy AAISL set up for Mr M had no additional cost to him, and that he also had other policies to protect his excess and provide a hire car. This would have meant he’d need to claim on three separate policies if he’d have decided to claim on his motor insurance policy, compared to using just the one additional policy AAISL set up. I’ve also noted that while Mr M wasn’t happy with the communication and the lack of recovery. I think his car would always have been recovered by the Police as that’s what the Police arranged when the passer-by was trying to arrange recovery through Mr M’s motor insurance. So, I’m not persuaded the lack of recovery under his motor insurance policy has caused Mr M a loss. However, the poor referral has meant Mr M wasn’t aware of the parties involved and when

he did try and complain AAISL incorrectly said he needed to raise the concerns with his motor insurer when it should have known he hadn't claimed on it.

It's also clear the poor referral has caused Mr M considerable unnecessary distress and inconvenience in the aftermath of an accident. I say this because he's had to try and find out which business, he's had to repair his car and arrange the hire car and was upset at not being able to use his insurer. From his own words he was "confused" in the referral call as to what was happening. Therefore, to compensate Mr M for this, and taking into account the gift already sent, I'm satisfied AAISL should pay Mr M an additional £200 for the distress and inconvenience it caused."

AAISL responded and accepted my decision. Mr M responded to say he never received the gift AAISL said it sent.

I asked our investigator to check with AAISL if the gift had been sent and to provide evidence of this. The investigator explained to AAISL that if the gift wasn't sent, I intended to increase the distress and inconvenience payment to £260, as this included the cash equivalent amount of the gift.

AAISL responded and said it was happy to take Mr M's word that the gift hadn't been received and would arrange the compensation payment upon his acceptance of my 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 considered Mr M's comments and that AAISL is happy to take his word the gift wasn't received and has agreed to the increase in compensation for distress and inconvenience to £260. I'm satisfied that's a fair and reasonable outcome as explained above and in my provisional decision.

My final decision

For the reasons explained above and in my provisional decision. My final decision is that I uphold this complaint and require Automobile Association Insurance Services Limited to pay Mr M £260 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 March 2023.

Alex Newman
Ombudsman