

The complaint

Ms L complains that Peter Best Insurance Services Limited (“PBIS”) referred her to an accident management company (“AMC”) for credit hire and repair when her car was damaged, who didn’t handle her claim well.

What happened

In 2019 Ms L’s parked car was hit by a third party driver causing damage to the front and rear of the vehicle. The third party admitted liability and provided his insurance details. Ms L said she had a classic car, which is very important to her, and she had fully comprehensive insurance cover at the time of the incident.

Ms L contacted her insurance broker, PBIS, to notify them of the collision. She said PBIS arranged for the matter to be raised with a separate claims handling company, who I’ll refer to as the “CHC”. Ms L was then passed on to an accident management company, who I’ll refer to as the “AMC”. Ms L said she wasn’t given a choice and the AMC’s role wasn’t properly explained to her. She said she wasn’t told that the AMC’s main interest was in car hire (also referred to as “credit hire”), rather than successfully dealing with all aspects of her claim.

Ms L explained that all phone conversations were conducted on her behalf by her personal representative, Mr L, because she is deaf and cannot use the phone. She said she made clear to the CHC at the time that she did not require a replacement car because she had another car she could use. She also wanted a specific garage to repair her car, which she had used two years earlier for restorations. She said the AMC agreed to this but then went back on their agreement, after she’d already made arrangements to have the car repaired at her chosen garage. She said she ultimately accepted a hire car from the AMC to progress her claim.

Ms L said it took two months to repair her car. She said she experienced a number of issues while the AMC was handling her claim and things didn’t go the way she expected. She also said the CHC told her she wouldn’t have to pay any charges, which wasn’t true.

Ms L raised separate complaints with the CHC and the AMC about the way her claim was handled, which were considered separately. Ms L then raised a complaint about PBIS for referring her to the AMC in the first place.

In response, PBIS said they appointed a CHC to log customer claims on their behalf and assist their customers by providing claims options to them. They said Ms L opted to claim via the credit hire route rather than the comprehensive cover she had under her motor insurance policy, and the AMC was instructed on that basis. PBIS said they couldn’t comment further on the handling of the claim by the AMC and the relevant third parties had addressed Ms L’s complaint with her directly.

One of our investigator’s looked into Ms L’s complaint. He listened to a recording of the call in which the CHC, acting on PBIS’ behalf, referred Ms L to credit hire and, ultimately, didn’t

uphold the complaint because he felt she was given a choice. But Ms L disagreed with the investigator's outcome. She asked for a transcript of the call, which the investigator provided.

Ms L made the following comments in response to the call transcript:

- PBIS' call handler was an experienced salesman and some of his comments were designed to recommend going to the AMC. Ms L said she required clear impartial advice from PBIS during the call, not a salesman.
- Ms L said the call handler didn't explain she would be left to pay for the return of her vehicle. She said her and her representative raised numerous concerns during the call, including who would pay for the transport of her car, and she felt PBIS' call handler lied to them on several occasions.
- She said she made the call handler aware at the outset that she wished her car to go to a specific garage, but the AMC declined to take her car there and then refused to pay for its return. She then had to claim these costs back herself from the third-party insurer.
- Ms L said the third-party insurer also said they wouldn't have covered the costs of the hire car if she'd had it for the full amount of time while her car was being repaired. So, she said she would have been left with a bill of over £3,000 if she hadn't returned the hire car after 10 days.
- Ms L feels these are major mistakes by PBIS for not explaining fully, or at all, the ramifications of choosing to repair her car via the AMC route, rather than via her own insurer. She said she was not given the full picture when asked to choose which route to use to pursue her claim and the evidence doesn't show that PBIS explained her options clearly to her.
- She also questioned the amount of commission PBIS received for referring claims to the AMC.

Ms L also said she initially complained about the CHC and the AMC because she felt they didn't deal with her claim fairly or completely. But she said it subsequently became clear that her insurance broker, PBIS, did not fully inform her of all the risks when asking her to choose between dealing with her claim through her own insurer, or letting the AMC pursue it for her – which is why she then complained about PBIS.

Because Ms L disagreed, the complaint was referred to me for a decision.

My provisional decision

I issued a provisional decision about Ms L's complaint explaining that I intended to uphold the complaint. In summary, I said the following in my provisional findings:

- PBIS was responsible for the CHC's actions or omissions when discussing Ms L's claims options with her on PBIS' behalf. PBIS is not responsible for the actions of the AMC.
- The call transcript was an accurate reflection of the call recording.
- During the call, Ms L made the CHC aware that she had no need for a hire car, so I didn't think the referral to credit hire was appropriate in the circumstances.
- I wasn't persuaded the CHC (acting on PBIS' behalf) treated Ms L fairly or acted in her best interests by recommending credit hire as her 'best option' in the circumstances.
- I also didn't think the CHC provided Ms L with enough clear, fair and not misleading information about her claim options for her to make an informed choice, especially given the foreseeable risks in this case.
- I didn't think Ms L would have proceeded down the credit hire route if the CHC (acting on PBIS' behalf) had given her better information. And I thought PBIS should pay Ms L £600 for the distress and inconvenience this matter caused her.

I asked both parties to respond to my provisional decision with any further comments or evidence they wished me to consider before I reached a final decision.

Ms L responded to say she and her representative were happy with my provisional decision. PBIS didn't respond by the deadline given. So, the complaint was referred back to me for a final 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.

Having done that and given there are no new comments or evidence for me to consider, I see no reason to depart from my provisional decision. So, I am upholding Ms L's complaint. I have set out my final findings in full below, which are in line with my provisional decision.

The responsibilities of PBIS

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

PBIS explained that they appointed the CHC to log customer claims and explain customers' claim options. So, when Ms L called PBIS to report the damage to her car, she was automatically transferred to the CHC to handle the call on PBIS' behalf. This means the CHC was acting as PBIS' agent and PBIS are responsible for the CHC's actions or omissions during this call when they discussed Ms L's claim options and referred her to the AMC for credit hire and repair.

However, PBIS' responsibility for the CHC is limited to when they were acting on PBIS' behalf - and PBIS are not directly responsible for any actions or omissions of the AMC. In other words, the AMC was acting in its own capacity when handling Ms L's claim – not on behalf of PBIS. And I don't have the jurisdiction to consider the actions of the AMC.

So, to be clear, I am only considering what happened during the call between Ms L and the CHC (acting on PBIS' behalf) when she was referred to the AMC for credit hire and repair, and whether the CHC, as PBIS' agent, met the required standards.

The relevant regulatory and other requirements

As Ms L's insurance broker, PBIS were obliged to provide Ms L with information that was clear, fair and not misleading, in line with their 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 Ms L contacted PBIS via her representative to tell them about her 'non-fault' claim for damage to her car, PBIS ought to have provided her with clear information about her options, so she could decide how best to proceed with getting her car repaired.

I appreciate PBIS appointed the CHC to fulfil this task on their 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 PBIS are ultimately still responsible for making sure their regulatory obligations are met by any third parties acting on their behalf.

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

If I find the CHC didn't meet these regulatory requirements during the call when they referred Ms L to the AMC ("the referral call"), then PBIS would be held responsible.

The referral call

I've reviewed the contents of the referral call and considered whether the CHC met the relevant regulatory requirements when acting on PBIS' behalf.

For context, it's important to note that all the call handler's messages were relayed via Ms L's representative (Mr L). Ms L then responded, but couldn't hear the call handler's reply, which again had to be relayed via her representative. In these circumstances, it was important for the CHC, acting on PBIS' behalf, to ensure everything was explained clearly, taking into account Ms L's communication needs.

During the call (at 00:12:00), the CHC's call handler explained that Ms L had two options to progress her claim. He said:

"So, I'm going to read through the two options that you have available to you to progress the claim. Now, obviously, I know which options you are far more likely to choose because, obviously, it was not her fault, but just for the purpose of the call I will need to tell you both options anyway. The first option would be to claim on her own comprehensive cover, now although this is the quickest way to get the vehicle fixed, it means the full policy excess would be applicable and it would also affect her no claims bonus as well."

The call handler then said (at 00:13:00):

"Option two, obviously, is claiming all costs directly from the third party insurer, so all from [third party's name]'s insurance, and by using this option, it means you'll be bypassing your own insurance policy, so, effectively leaves you with no money to pay, no excess to pay, but the claim may take slightly longer."

Although the call handler told Ms L that she could claim through her own insurance policy, I'm not persuaded he presented her options clearly and fairly – especially as he insinuated that there was an 'obvious' choice for non-fault claims to save paying the policy excess and protect her No Claims Bonus (NCB). In fact, Ms L may have been able to claim her excess back from the third party's insurer as an uninsured loss, even if she chose to claim through her own insurance policy. And although any unprotected 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. I note Ms L's statement of facts for her motor insurance policy says '0' years for NCB in any event.

The only drawback the call handler highlighted as regards claiming the costs back directly from the third party's insurer was that it may take longer. Otherwise he said Ms L would have 'no money to pay'. But this isn't always guaranteed if for any reason the costs can't be recovered from the third party insurer – and this is a real risk when using credit hire with financial consequences that could be much higher than the policy excess Ms L would have to pay if claiming under her own insurance. Indeed, Ms L's policy excess was £100 whereas the credit hire charges were £65 a day, and Ms L could become liable for those credit hire costs, if they aren't recovered from the third party insurer. So, I'm not persuaded that the

CHC presented Ms L's options clearly and fairly when acting on PBIS' behalf. Given the CHC highlighted the main benefits of credit hire, they ought also to have highlighted the key risks, in order to present Ms L with a balanced view of her options and allow her to make an informed choice about how to proceed.

Ms L didn't engage with these points and instead responded to explain that she only wanted her car to be repaired at the specific garage that had carried out restorations on the car previously, which the call handler said "*wouldn't be an issue*" (at 00:14:30). Ms L made clear throughout the call that having the car repaired at the particular garage of her choice was her main concern. And I don't think the call handler properly explained Ms L's choices to meet this key priority (which could also be possible if claiming under her own insurance policy). Instead, he told her credit hire would be her best option to use the specific garage she wanted.

Ms L was clearly upset later in the call and questioned how it would all work because her chosen garage was situated far away (at 00:20:30). The call handler confirmed that the AMC would collect the vehicle, take it to the garage Ms L wanted, and return it back - and that the costs would all be claimed back from the third party's insurance (at 00:22:30 to 00:23:30). In reality, there were issues with using her chosen garage because of its location, which was reasonably foreseeable by the CHC – especially as Ms L specifically raised it as a concern. At the very least, the CHC shouldn't have told Ms L this wouldn't be an issue. So, I'm not persuaded the CHC provided Ms L with enough clear information for her to make an informed choice about how best to proceed. Rather, they recommended credit hire as her 'best option' to meet her needs - and I don't think it was. I've explained why in more detail below.

Ms L then told the CHC that she had a second car that she could use instead of getting a replacement car through credit hire (at 00:17:00): "*As you know, I've got another car. A Mercedes, which I can use [...] I do short journeys in both of them. I alternate them.*" Ms L's representative then confirmed: "*Yeah, so, I think she can manage with the other car that she's got for the moment.*"

By telling the CHC about her other car, Ms L made clear that she had no real need for a replacement car. And, in my view, this would therefore make any recommendation for credit hire inappropriate, given this could inflate claim costs unnecessarily, go against the consumer's duty to mitigate their losses, and ultimately could affect whether the hire car charges are recoverable from the third party insurer.

Instead of acknowledging this could present issues with the credit hire option, the call handler responded to say "*...the only other option is to go down the ULR route. Now ULR route stands for uninsured loss recovery.*" (at 00:17:14 to 00:17:30). He said this could take slightly longer and Ms L would have to get two alternative quotes for repairs. However, she also still had the option of claiming on her own policy. So, ULR wasn't her 'only other option'.

Ms L's representative later said (at 00:18:46):

"Ultimately her main concern is that she can use her garage [...] So, what she wouldn't want to do is to select an option that would prevent that from being the case."

And the call handler confirmed (at 00:19:30):

"Yeah. I would say the best option to go for in that case would be the first one [credit hire and repair]. I mean, she can still use the Mercedes if she wants to, she doesn't have to use the replacement vehicle if she doesn't want to. It's just going to be there if she needs it for an emergency or something like that. But I have to say the main benefit of going down that route is it would be quicker. They would give you a call

today to make the arrangements, obviously, as opposed to you going to two different garages to get the quotes in the first place.”

And later (at 00:21:30), the CHC’s call handler said:

“So, by accepting this option where you get a courtesy car, whether you want to use it or not when you get it is up to you. You can just leave it on the driveway if you want, but the point is that that will enable you to still use [Ms L’s chosen garage] and then get it done without going through the hassle of having to go to other people for quotations and so on.”

In effect, the CHC’s call handler, while acting on behalf of PBIS, made Ms L believe that if she took a hire car – which she didn’t need – her car would be repaired quicker, at her chosen garage. He didn’t tell her that the hire car comes with a cost which the AMC then tries to claim back from the third party insurer – and, if for any reason the third party insurer refuses to pay, there is a risk that the AMC could then pursue Ms L for those costs under the terms of the credit hire agreement. And, ultimately, because she had no need for a hire car, this was a foreseeable tangible risk and credit hire wasn’t a suitable option for her.

Indeed, the third party insurer confirmed it would not have paid the costs for a hire car she did not need. They said:

“We appreciate you have mitigated your losses as stated but would advise that as a claimant you have a duty to do so, and we would not have settled any hire bill from [the AMC] presented for a vehicle that would have sat on your drive for an extra 5 weeks, as stated in your correspondence to [the AMC]”.

I accept the AMC was expected to go into more detail with Ms L to determine whether she was eligible for credit hire as the next stage in the credit hire process. But, in circumstances such as these, when it is clear from the outset that credit hire isn’t suitable because Ms L had another car she could use and no need for a replacement car, I am not persuaded the CHC treated Ms L fairly or acted in her best interests by proceeding to tell Ms L that credit hire was her ‘best option’.

It is Ms L’s duty to mitigate her losses (as she tried to do in this case by handing the hire car back early). However, the CHC, as PBIS’ agent, is the party in the position of knowledge in this situation – that is, they knew, or ought reasonably to have known, about the real, tangible risks of the third party insurer refusing to pay credit hire charges in these circumstances. Or, at the very least, I’m persuaded the CHC knew that there wasn’t a genuine need for a hire car. And I find the credit hire referral inappropriate on this basis.

Overall, I am not persuaded the CHC treated Ms L fairly or acted in her best interests by recommending credit hire as the ‘best option’ in these circumstances when acting on PBIS’ behalf for the reasons I’ve explained. I also don’t think the CHC provided Ms L with enough clear, fair, and not misleading information about her options, especially given the foreseeable risks in this case.

I am persuaded that if the CHC had given Ms L better information she would not have proceeded down the credit hire route in these circumstances because it wasn’t suitable for her needs. I also find it unlikely having to pay the £100 excess to claim via her own comprehensive policy would have outweighed the risk of having to pay credit hire charges at £65 per day.

For these reasons, I uphold Ms L’s complaint. I’ve set out the level of compensation I consider appropriate below.

I understand Ms L also questioned the impartiality of the advice she was provided by the

CHC when acting on PBIS' behalf, and the amount of commission that was paid for the referral to the AMC. However, I've already explained why I don't think the CHC treated Ms L fairly or acted in her best interests by referring her to credit hire in these circumstances. So, I still don't need to reach a firm finding on this point as it wouldn't change my overall conclusion.

Putting things right

As I've already explained, I don't think Ms L would have chosen the credit hire route if she'd been given better and clearer information about it. So, in circumstances like these, I would aim to put Ms L back in the position she would have been in, but for the referral to credit hire – as I explained in my provisional decision.

Looking at Ms L's financial losses, she said she incurred costs of £150 and around £268 for her car to be transported to and from her chosen garage. I understand the third party's insurer has since settled these costs – although Ms L had to claim these back herself because the AMC didn't do this for her (which I have considered further below). Ms L hasn't provided any supporting evidence for any other losses she may have incurred. So, I am not awarding anything further for consequential financial loss in the circumstances.

The third party's insurer also paid Ms L £100 to compensate her for the loss of use of her car for 10 days, which is the time it says the repairs should have taken. Given Ms L had an alternative car available to her while the repairs were being carried out, I wouldn't award any more than this. In any event, the length of time the repairs took is not something that PBIS had any control or influence over and I can't consider the actions or omissions of the AMC in this decision. So, it wouldn't be fair or reasonable to ask PBIS to pay Ms L any compensation for the loss of use of her car in these circumstances.

However, I think this whole matter has caused Ms L a considerable amount of distress and inconvenience, which could have been avoided if she hadn't been referred to credit hire inappropriately, or if she had been given better information about it to enable her to make an informed choice. So, I think PBIS should pay her compensation to reflect this. I've set out the main points I've considered below when thinking about the level of compensation to award.

Firstly, Ms L has explained how upset she was that someone had damaged her car, which she is very attached to. The driver responsible for hitting her car then left her a note with a phone number to call, which she couldn't use without assistance. While PBIS isn't responsible for the distress caused to Ms L by this incident, when she called PBIS for help via her representative she was already upset by what had happened. And I think some of the events that followed exacerbated the situation and could have been avoided, but for the inappropriate and unclear referral to credit hire by PBIS' agent.

Secondly, Ms L said she is profoundly deaf and registered disabled, so communicating via the phone is impossible for her to do directly. She has to use a representative and lives on her own, with no immediate family to support her. I'm satisfied PBIS' agent was aware of her communication needs from the referral call and, while they communicated via her representative, I can't see they did anything else to assist Ms L. Instead, the CHC (acting on PBIS' behalf) arranged for the AMC to call her to progress her claim. Ms L said the majority of contact was by phone and she had to rely on her ex-husband, Mr L, to make himself available to support her. She said this was stressful and Mr L had to spend many hours on the phone and experienced great inconvenience through the many interruptions, including having to return early or otherwise delay trips to help her.

Thirdly, I acknowledge Ms L and her representative would have experienced some inconvenience when dealing with her claim, even if she hadn't used credit hire. However, I

think the fact Ms L didn't have a real need for the replacement car undoubtedly worsened the situation and made the communication unnecessarily protracted for the following reasons:

- Ms L was passed back and forth between the CHC and the AMC at the outset due to having no real need for a replacement car.
- She had issues with the hire car, as it didn't have a manual and she couldn't watch the demonstration at the same time as lip reading, which would have been stressful for her. This situation could have been avoided given she didn't need the replacement car.
- Ms L was asked to sign a blank screen on a device by the AMC without seeing the documents she was agreeing to. When they were sent to her later, they included a statement of truth about her need for a hire car and she said the reasons listed were wrong. Ms L then had to contact the AMC to resolve this. This could have been avoided if the CHC had acknowledged she had no real need for a hire car from the outset.
- Ms L had the inconvenience of arranging the early return of the hire car she didn't need.

All these issues had a greater impact on Ms L because she needed her representative to communicate with the parties for her. And although I can't award compensation directly to Mr L as a third party because he isn't the eligible complainant here (Ms L is), I'm persuaded the knock on effect of the inconvenience he experienced would have been stressful and upsetting for Ms L, having to rely on him as her representative to resolve these issues – which I think were foreseeable issues on the part of the CHC.

Finally, I consider PBIS' agent to have caused Ms L further distress and inconvenience by failing to explain the situation clearly to her, including the clear risks of using credit hire in this particular situation (without a real need for a hire car). The CHC raised her expectations that she could use her chosen garage without issues, despite it being far away, and that she wouldn't have to pay any money at all as it would all be recovered from the third party's insurer. In reality, there were issues with using her chosen garage, she had to pay to transport her car, and the AMC didn't claim this back for her, so she had to do it herself. Ms L said this all caused her a great deal of anxiety. In my view, Ms L didn't get the '*least hassle*' option she was led to expect. And, again, I'm persuaded that all of the issues she experienced were reasonably foreseeable on the part of the CHC when acting on PBIS' behalf in these circumstances.

Having considered all of the above, and in line with my provisional findings, I think PBIS should pay Ms L £600 to compensate her for the distress and inconvenience caused by the inappropriate and unclear credit hire referral and the reasonably foreseeable issues that followed.

My final decision

For the reasons explained above, I uphold Ms L's complaint and direct Peter Best Insurance Services Limited to pay Ms L £600 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 13 October 2022.

Joanna Brown
Ombudsman