

## The complaint

Mr P complains about how Zurich Insurance plc (“Zurich”) handled a claim under his car hire excess insurance policy.

## What happened

Mr P has an excess insurance policy with Zurich. He rented a car in summer 2022.

Mr P returned the car to the rental company, which then found that the driver’s door lock was broken in a way that it wouldn’t accept a key inserted into it.

The rental company had signed off the lock as being “ok” before Mr P rented the car. It said the lock had been “forced”.

Mr P paid for its replacement at a cost of 280 Euro.

Mr P claimed for this amount under his excess insurance policy. Zurich declined his claim saying it wouldn’t cover mechanical breakdown. The part of the policy wording it refers to is:

*“General Exclusions*

*Wear and Tear.*

*mechanical breakdown or damage that occurs as a result of normal use and aging”*

Mr P was unhappy and brought his complaint to this service.

Our investigator looked into Mr P’s complaint and upheld it. He said he thought it was unfair of Zurich to apply this exclusion because it didn’t have any evidence that the reason for the damage was wear and tear. He said Zurich should pay Mr P’s claim, plus 8% interest, and add £50 for Mr P’s inconvenience.

Zurich didn’t agree with the investigator’s view and asked for the complaint to be reviewed by an ombudsman, so it has been passed 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 so I’m going to uphold it and I’ll explain why.

There has been a considerable amount of correspondence between this service and Zurich after the view, in which Zurich has changed its stance on which exclusion applies, or whether the policy has any cover for Mr P’s claim at all.

In the email rejecting his claim, Mr P was told his policy wouldn’t cover “mechanical breakdown” which would normally relate to the exclusion I’ve mentioned above. The reason

for rejecting his claim was then changed to a different exclusion:

*“Breakdown of the Rental Vehicle caused by lack of fuel, frozen fuel or any other cause not directly resulting from accidental damage or theft.”*

Zurich later said that it agreed that its application of the Wear and Tear exclusion was incorrect.

But it said there still wasn't any cover for the event because the damage was described as “forced” so it couldn't be “accidental” damage.

I've considered how the damage was caused. The rental company has said it thought the lock had been “forced”. I think it's Zurich's position that the damage may not technically be “accidental” due to the sense that the word “forced” might mean “deliberate”.

But Zurich's policy explicitly says it will cover excesses paid resulting from theft or vandalism of the car. And I'd reasonably say that a forced lock was likely to have been as a result of theft or attempted theft of, or from, the car; or vandalism; or a mistake made by Mr P or a third party in trying to open the car with the key, possibly involving some force.

In each of these situations, Zurich's policy seems to me to provide cover.

Zurich also said that there wouldn't be any cover under the policy:

*“Policyholder has confirmed no damage was sustained to the hire vehicle whilst in his possession.”*

I've thought carefully about Zurich's approach here and I don't find it fair and reasonable.

I think it's clear that Mr P rented a car, which was signed over to him as being “ok”. Once he returned the car, damage was then found to a lock. It's likely that the rental company put the car through a series of checks to make it ready for the next customer, so it's likely that damage might be found during this preparation process. And Mr P would likely be liable for this damage under the terms of his hire agreement.

The type of damage found on the car was apparently limited to the door lock mechanism.

Many vehicles are locked and unlocked using remote controls, and I don't think it's unreasonable to say that Mr P might not have used the actual, physical key to lock the car whilst it was in use by him, and I can see he used the physical key to start the car. So, he might not reasonably have been aware of the lock damage when he handed the car back.

Ultimately, I don't think it's fair that Zurich can say there wasn't any cover under the policy, when it's likely that Mr P wouldn't have reasonably been aware of the damage when he handed the car back.

If Zurich wished to apply an exclusion to Mr P's claim, then it must prove that the exclusion applies. And in this case, I don't think it has.

In summary, I think it's fair and reasonable to require Zurich to settle Mr P's claim with interest. I also think Zurich should pay £50 for the inconvenience he has been caused.

### **My final decision**

My final decision is that I uphold this complaint. I direct Zurich Insurance plc to:

- Settle Mr P's claim according to the remaining terms and conditions of his policy.
- Add 8% simple interest to the amount, calculated from the date Mr P paid the amount, to the date it is refunded back to him by Zurich.
- Pay Mr P £50 compensation for his inconvenience.

Zurich Insurance plc must pay the amount within 28 days of the date on which we tell it Mr P accepts my final decision. If it pays later than this, it must also pay interest on the amount from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 3 March 2023.

Richard Sowden  
**Ombudsman**