

The complaint

Miss B complains about U K Insurance Limited's ("UKIL") handling of her car insurance claim.

UKIL are the insurers of Miss B's policy. Part of this complaint concerns the actions of an agent. As UKIL have accepted they are accountable for the actions of the agent, any reference to UKIL includes the actions of the agent.

What happened

Miss B's car wouldn't start and was showing a warning light saying the key couldn't be detected, so she called UKIL, and they sent an agent who also couldn't get the car started. A recovery truck was then called but Miss B's car needed manoeuvring to get it on the truck. Miss B says her car has an electric handbrake which means it can't be disengaged unless the car is started. She says, despite this the recovery driver repeatedly yanked the handbrake. Miss B says another warning light then appeared saying there was a parking break fault.

Miss B's car was then towed home but during the journey Miss B was told by the driver she needed to pay £96. Miss B called UKIL to query this but found the call handler to be rude, so she terminated the call. Miss B then tried a different number which was constantly engaged but then managed to get through on a separate number and pay the £96. Miss B says, when she got home, she tried her spare fob and her car started but the parking break fault was still showing. Miss B then took her car to a garage and was told the parking break fault would cost £606 to repair – which she paid. Miss B then complained to UKIL.

UKIL responded and explained their technician had considered the issue with the parking break and found this was down to wear and tear and not down to any damage caused by the recovery driver. They also explained the policy terms and conditions set out why the £96 was payable. They upheld Miss B's complaint about how the call handler spoke with her and sent a cheque for £100.

Our investigator looked into things for Miss B. He thought UKIL are responsible for the damage caused to the parking brake and recommended they cover the repair costs together with 8% simple interest. Miss B agreed but UKIL disagreed so the matter has come to me for a 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've decided to uphold the complaint. And, I think the investigator's recommendation is a fair way to resolve matters.

Firstly, I've looked at the service given to Miss B. My role requires me to say how a complaint should be settled quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute. The key facts about the service areas of the complaint aren't in dispute. UKIL have admitted they got things wrong in their handling of Miss B's call and have paid £100 – and I think this is fair and reasonable in the circumstances. Miss B explains the only dispute she has relates to UKIL's refusal to cover the cost of repairs for the parking brake. So, that's what my decision will focus on.

I can see UKIL say they have no way of proving if the electronic parking brake ("EPB") was working before recovery as Miss B's car wouldn't start to allow them to operate the EPB. But they also say Miss B has no way of proving the EPB was working before the recovery. So, I've thought carefully about this, and I've taken into account the information I do have as well as the comments from the parties. I've then made a judgement call based on the balance of probabilities. That is, what I believe is more likely the case than not.

I can see UKIL, in dealing with this complaint, referred the matter to their technician who in turn contacted the garage who repaired the EPB. The technician's notes say the repairing garage explained there was no visible damage on the switch and they found an electronic fault with the switch which was causing the EPB to not work. The notes say *"Basically a fault with the electronic circuit inside the EPB switch."* The technician says they would've expected the recovery driver to try and operate the EPB before attempting to recover the car with the handbrake locked on. The technician says the most probable cause of the EPB switch failing is likely down to wear and tear due to the car's age and mileage.

I can see Miss B also contacted the repairing garage for their thoughts on the damage and she has provided us with a copy of their response. They confirm there was a fault code in the parking brake module which required a replacement switch to fix the issue. They refer to Miss B mentioning the recovery driver was yanking the handbrake quite hard and say *"...this in my opinion could quite easily of [sic] caused the issue if excessive force was used as the problem was not present before I can only surmise this is the case"*

Given that the repairing garage diagnosed the problem and then carried out the necessary repairs, I would attach more weight to their opinion and be persuaded by what they felt was the cause of the issue. And, in the circumstances of this case, I'm persuaded the damage was caused by the recovery driver. I say this because, in their discussion with UKIL's technician, they describe the damage they found – and this being an electronic fault. It's UKIL's technician who then feels this damage is linked to wear and tear – not the repairing garage. I will add, I have taken into consideration why the technician believes a fault with the electronic circuit inside the EPB switch is unlikely to have been caused by the recovery driver trying to operate the EPB. But, in the information provided by Miss B, the repairing garage is asked for their opinion on a very specific scenario – and the one which Miss B says occurred. And, the repairing garage – knowing the exact nature of the fault with the electronic circuit – say a recovery driver could *"quite easily"* have caused the issue.

So, the repairing garage haven't cast any doubt on heavy yanking of a handbrake being a likely and probable cause of damage to an EPB – in fact they say it can be done quite easily. And, I haven't seen any evidence the repairing garage believe wear and tear was the cause of the issue – and I believe they would be best placed in these circumstances to make that link if they felt that was the case.

I'm further persuaded there wasn't an issue with the EPB before the recovery driver's actions because the information provided by UKIL shows they contacted the garage who first attended to Miss B's car and they've asked for their account of the event. The garage

explain their job notes show they initially attended due to a key fault. They say they could also see at this point “...*the handbrake was stuck on, as was the steering lock.*” They explain they didn’t cause any damage and “...*this fault was the reason as to why we attended to this vehicle in the first instance.*” I’ve seen the job sheet, and this notes the fault found was “Key – *Electronic Card*” and says the technician wasn’t able to repair the fault and recovery was required. Miss B has provided a photo showing the fault sign which appeared on her dashboard following the recovery driver’s actions. It’s a warning notice about the EPB and I believe, if this fault was showing when the first technician arrived, it’s reasonable to expect they would’ve identified this and noted it on the job sheet.

I note UKIL say the repairing garage explained there was no visible damage to the switch – it wasn’t snapped or cracked. They say excessive force would’ve led to damage to the switch. They also say they doubt a professional recovery driver would apply excess force. And, given they recover cars everyday with EPB issues, they will know how much force to apply to operate an EPB switch. I’ve taken UKIL’s comments into consideration but I have to decide what I find to be more persuasive. I’ve already mentioned that I find the repairing garage’s opinion to be most persuasive in the circumstances of this case and, even though they were aware the switch wasn’t damaged, they still didn’t, in their response to Miss B, rule out the possibility that the recovery driver could be at fault. I do acknowledge UKIL’s points about recovery drivers knowing about EPB switches, but these are more general statements and they don’t prove that the recovery driver in this specific case didn’t use excessive force.

Putting things right

I’ve taken the view that the damage to the EPB was caused by UKIL’s agent so they should refund the repair costs paid by Miss B together with 8% simple interest from the date she paid to the date of settlement. UKIL should provide Miss B with a certificate showing any taxation deducted.

My final decision

My final decision is that I uphold the complaint. U K Insurance Limited must take the steps in accordance with what I’ve said under “Putting things right” above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss B to accept or reject my decision before 3 March 2023.

Paviter Dhaddy
Ombudsman