

## **The complaint**

Mr A has complained that his motor insurer, One Insurance Limited (“One Insurance”), turned down a claim he made on his policy.

## **What happened**

In August 2022 Mr A made a claim to One Insurance after his car was damaged as a result of him driving into water whilst driving home from work.

Mr A said this is a route that he takes regularly and has done so for many years. He said on that particular day he was driving down the road and saw that there was standing water which he estimated to be about six inches high – up to the kerb. He said he didn’t consider that this would damage his car and carried on. He then stopped driving when he saw another car coming from the opposite direction. At that point his car’s engine cut out and he wasn’t able to restart it. He added that within a matter of minutes the water rose higher and he had to exit the car from the window.

Mr A said the particular road was in a low flood risk area and had no flood warning signs. He said he saw a bit of water as he turned into the road but in the past, it has never been any more than an inch. He also said he personally didn’t know that particular part of the road to flood.

One Insurance investigated the claim and eventually turned it down. It said Mr A had failed to take reasonable precautions to protect his car from damage and loss. It added that Mr A had been driving slow enough and had time to evaluate the area before driving into the water. It also said he could have taken an alternative route.

Mr A didn’t agree and complained to One Insurance who didn’t uphold the complaint. It said the particular road Mr A had driven down was prone to flooding and as he failed to take an alternative route, he failed to protect his vehicle from damage or loss.

Mr A responded to One Insurance to say that at the time of the incident there were no warning signs regarding a potential flood, so he had no need to consider taking another route. He clarified that he would have been driving around 25 to 30 miles per hour and not three as One Insurance had suggested and would have had no time to assess the area. He added that the speed limit would have been 40 miles per hour. He also clarified that the engine had cut out and whilst trying to restart it the water rose from six inches to around three feet which is why he had to climb out through the window. He added that he had only purchased the car five days before the incident and would, in any event, not have deliberately driven into three feet of water.

Mr A then brought his complaint to us. He said he wanted compensation for being unable to use his car. He said he’d bought the car on finance which he was still paying.

Two of our Investigators reviewed the complaint and reached the same view – that the complaint should be upheld. Our Investigators didn’t think Mr A had failed to take reasonable care. They said they didn’t think he had been reckless or that he was aware of and ignored

the risk of damaging his car. They thought One Insurance should now deal with the claim under the remaining terms of the policy and that it should pay interest on any settlement it pays Mr A, for example if the car is deemed a total loss. They also thought One Insurance must pay Mr A £250 for the distress and inconvenience it caused him.

One Insurance didn't agree and asked for an Ombudsman's decision. It said its own research shows the area has a high risk of flooding. It said given the heavy rainfall on that particular day, Mr A should have suspected the road would potentially flood. It added that clearly Mr A knew the depth of water was more than an inch and still drove through it causing his engine to cut out.

### **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 have decided to uphold it.

One Insurance has relied on a term in the policy which says that any person in charge of the car must take reasonable precautions to, among other things, protect the car from damage or loss. One Insurance says Mr A failed to take reasonable precautions because, essentially, he knowingly drove into water that was six inches deep.

If an insurer turns down a claim because the consumer failed to take reasonable care, there needs to be evidence to show the consumer acted in a way that amounted to recklessness. The test of recklessness we use is the one set out in the leading legal case on 'reasonable care' – Sofi v Prudential Assurance [1993] 2 Lloyd's Rep.559. In summary, a consumer failed to take reasonable care if they recognised a risk but took it anyway by taking measures which they knew were inadequate or taking no measures at all.

So, I've thought about whether, in this instance, Mr A recognised that there was a risk of the engine cutting out due to the depth of the water but still decided to take that risk. In these specific circumstances, I don't think that was the case and I will explain why.

Mr A said he has driven the particular route and never knew it to be a flood risk and was not aware of it flooding in the past. He also said that there was a heavy storm after a dry period and that the water rose due to blocked road drains. One Insurance said that the area was high risk for flooding. From what I have seen and what our second Investigator explained was that from her research the level of risk differed dependant upon which particular stretch of the road was considered. On the particular stretch Mr A was at, the risk was low though I appreciate that on other parts of the road it may have been higher.

Mr A has also provided photographs of the road both during the flood and the following day when the water had cleared. Mr A said there were no flood warning signs. I couldn't detect any on the photographs either.

One Insurance said that Mr A should have taken an alternative route. But I don't see that Mr A had any reason to consider this – not until after he had turned onto this particular stretch of this road by which point it was too late to turn back. As Mr A said there were no warning signs so he had no reason to suspect the road would flood. And from the photographs I have seen the road was straight and seemingly level, without any big undulations or dips where water could collect after heavy rainfall. So bearing everything in mind, I don't think it is reasonable for One Insurance to argue that Mr A should have taken an alternative route.

Mr A said his engine cut out when he stopped and the other car passed him from the opposite direction. He said it was possibly the swell of water coming from the other car which caused his engine to cut out. I think that may have been a possibility and if that is the case it is not something that Mr A could have anticipated and therefore not a risk he ignored.

Even if the engine didn't cut out due to the swell of water from the other car, I still don't think Mr A has been reckless here. Mr A said there were no other cars ahead of him at the time to see if they could drive through and he had no reason to think he couldn't drive through the road. He said he thought there was a bit of water but nothing like what he encountered.

Mr A added that he turned into the road and saw the water but it was at kerb height which he estimated to be six inches. He said it wasn't until after his engine stopped that the water rose quickly to about three feet which meant he had to exit the car through the window. One Insurance says Mr A was reckless by driving through six inches of water. I don't think that was the case. Mr A said he didn't think there was a risk even if the water was at kerb height/six inches high. And I can see why that is reasonable. The photographs Mr A provided, specifically the one from the day after the flood where the water had cleared, shows a number of different types of cars and their sills/floors do seem higher than kerb height. And the kerb does not seem particularly high either. So I can see why Mr A would have not seen any risk in driving into this level of water. And as I think it is reasonable he didn't see a risk it follows that I don't think that he ignored it/failed to take appropriate action to avoid it i.e. was reckless. And so I don't think he failed to take reasonable care. It follows that I think One Insurance must now deal with Mr A's claim subject to the remaining terms of his policy, including any applicable excess.

I don't think One Insurance has handled the claim well and for that I think it must pay Mr A compensation. Mr A has been without his (new at the time) car for a number of months. He said he doesn't know the extent of the damage and that the car is currently parked at a friend's garage. Had One Insurance dealt with the claim it is likely Mr A may have been compensated by now either by having his car repaired or by receiving his total loss payment (after the finance had been paid off). And if his car was repairable, he may have had a courtesy car while his was in for repairs. Given that the claim hasn't been assessed I haven't looked at any disruption caused to Mr A while he has been without his car but when dealing with the claim I think One Insurance should consider whether it would be appropriate to also make a loss of use award. In the meantime, I think One Insurance must pay Mr A £250 compensation for the distress and inconvenience he suffered.

### **My final decision**

For the reasons above, I have decided to uphold this complaint. One Insurance Limited must now deal with Mr A's claim subject to the remaining terms of his policy and pay interest at a rate of 8% per year simple on any payment it makes to him under the policy from the date of the claim to the date it makes payment, though I appreciate in the event his car is a total loss it will likely pay off his finance first. It must also pay him £250 compensation for the distress and inconvenience it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 April 2023.

Anastasia Serdari  
**Ombudsman**