

The complaint

Mr C has complained about Astrenska Insurance Limited which provides him with a policy for a guaranteed courtesy car in the event his car is deemed a total loss or is damaged to the extent it's undriveable. He says Astrenska didn't provide him a car when he needed one.

Astrenska provides the policy which is administered by its agent whom I'll refer to when necessary as "A". But Astrenska, as the underwriter of this policy, i.e. the insurer, has accepted it is accountable for the actions of A. So any failure by A, is a failure of Astrenska.

What happened

Mr C was involved in an accident on 27 November 2021. He made calls that day and on 6 December 2021 spoke to Astrenska's agent. Mr C was expecting to get a courtesy car even whilst his motor insurer, handling the accident claim, was deliberating his cover – after all Mr C had taken the policy with Astrenska to ensure he would remain mobile in the event of an accident.

Astrenska did not provide Mr C with a courtesy car in December 2021. Astrenska later told Mr C that after speaking to him on 6 December 2021, it had not heard from him or his insurer again until January 2022. But Astrenska did agree to pay Mr C what he would have been entitled to under the policy had it progressed a claim for him – i.e. £40 a day for the hire period covered where a car can't be (in this case wasn't) provided – £840 in total. It also paid Mr C £150 compensation for the distress and inconvenience it accepted it had caused him by not providing a car for him to use.

Mr C said that wasn't sufficient. He noted that by the time Astrenska made this offer it was long after the accident date and he had been without a car from the date of the accident until his car insurer provided him a courtesy car under its policy towards the end of January 2022. He felt that had caused him a lot of problems – even though Astrenska's cover would only have given him a car for part of that time. Mr C said that if he'd had a car from Astrenska in December 2021, as the policy had entitled him to, he wouldn't have missed picking up important medication or collecting his personal belongings that he'd had in storage whilst he moved home. But, Mr C said, Astrenska's error meant he couldn't do either of those things. Mr C explained that he eventually got replacement medication at the end of January 2022, but he was unable to retrieve his stored items, because not having a car meant he hadn't been able to work. That meant, he said, that he hadn't been able to pay to keep up the storage, and the storage company ultimately sold his possessions at auction and still came to him for costs, which it said were outstanding and not covered by the auction proceeds.

Our Investigator felt that Astrenska should reimburse Mr C's travel costs referenced by him in an email to it dated 18 December 2021, of £201, plus interest. Also, the cost for storing items in December 2021, plus interest. Finally, our Investigator felt that Astrenska should pay Mr C a further £400 compensation for upset he'd experienced during the period in which he should have had a car for use but didn't due to Astrenska's error.

Mr C was unhappy with the findings. He didn't think they went far enough, not given what he saw as the significant and long-term impact of Astrenska's error on his health and finances.

And Astrenska said it couldn't agree to paying the storage costs. Both asked for an Ombudsman's consideration and the complaint was passed to me.

I felt it should be upheld in part – with Astrenska paying Mr C a total of £750 compensation. That was because I was satisfied that Astrenska failed Mr C, and whilst that failure only occurred over a short period (due to the term of the policy), I accepted that it had a very significant impact on him. However, I wasn't persuaded to make it pay anything more than that, in respect of compensation, or any other award. So I issued a provisional decision to explain my views on everything to both parties. My provisional findings were:

“Astrenska’s policy is one a driver pays extra for on top of their standard car insurance. It is something that is designed to provide added peace of mind to drivers who have an accident. It makes the provision of a courtesy car, so that the driver can stay mobile, a certainty which often is not provided by standard car insurance cover. And Mr C had taken the step of choosing and paying for this extra cover. But he did not get the peace of mind or service promised. Instead he was left without a car at a crucial time for him.

When Mr C had the accident he had just moved home – in fact was in the middle of moving his possessions into his new home. He wasn't familiar with the area and he says it was more rural than where he had been living. I can completely understand that it was really important for Mr C to be mobile at this time. And given the policy with Astrenska he had paid for, he should have been.

However, when Mr C contacted A and spoke with it in December – which I'm satisfied did happen – A seems to have completely overlooked the type of policy Mr C had with Astrenska and which it was meant to administer. I say that as A often deals with providing cars to drivers in different circumstances to those allowed for by the Astrenska policy. But A didn't take account of the policy Mr C had or what it was meant to provide to him as a result. Not until much later when it paid him £840. This means that A failed Mr C in this respect, and as A acts, in this situation, only as Astrenska's agent, that failure is Astrenska's. Astrenska has to make up for that.

I know that Mr C believes that Astrenska would have to do a lot in that respect – possibly paying him £20,000 for his lost belongings, because that is the value of the insurance cover he'd paid for them whilst in storage, and what the storage company says he still owes it. Also likely paying him some significant sums for wages he didn't earn as he couldn't work. Further Mr C is worried that Astrenska's actions affected his long-term physical and mental health, the latter of which at least has prevented him from working since. And I can see why, from where Mr C is sitting, that he thinks all of these issues are inextricably linked to Astrenska's failure to provide the cover he had paid for and was entitled to – that but for its failure everything would be different. But I'm not persuaded that is the case.

Mr C's accident occurred on 6 December 2021. The storage company called for a monthly direct debit on 16 December 2021, but Mr C did not have enough funds in his account for it to be paid. And the contract he had with the storage company says that any missed payment will allow it to seize his goods. And I've seen nothing that shows he could most likely have worked in the days immediately after 6 December to achieve income in time to secure funds into his account to cover the direct debit on 16 December, just ten days after the accident.

I know Mr C will likely say that if he'd been able to work he'd have made the missed payment up and that would have forestalled the later action taken by the storage company to sell his goods. But I note that Mr C seems to have paid his November storage charges late too, on 25 November by credit card rather than around the 10 – 16 of the month by direct debit, as his December bank statement and paperwork from the storage company suggests was usually the case. And I note that in the start of December, Mr C's bank account was already

around its overdraft limit – with his outgoings that month fairly equal to his incomings. So I think his financial situation was quite finely balanced regardless of his ability to drive.

I'm also mindful that the cover with Astrenska would only ever have given Mr C a courtesy car for 21 days, until 27 December 2021 – and he didn't get a car under his car insurance policy for about another month after that, towards the end of January 2022. So he'd always, by the end of December 2021, have been in a position where he had no car to drive. Given his finances then it's by no means clear to me that he'd likely have been able to make up December's storage payment, or pay January's. So I can't be satisfied that the loss of Mr C's possessions caused by the storage company auctioning them or the costs for storage he wasn't able to meet, on balance, came about due to Astrenska's failure.

In terms of working, I haven't seen that Mr C worked in the days or weeks running up to 6 December 2021, or that he had arranged to work at any time during December but had to cancel due to a lack of transport. I appreciate that Mr C may have chosen not to work in the period he was moving home – but as he was still moving on 6 December 2021, and with no evidence of work having been booked in advance for the week or so after that, I can't be sure when or if he'd likely have worked if he'd had transport. So I'm not persuaded that the fact he didn't work in December 2021 was most likely due to Astrenska's failure. And, as I noted above, even if Astrenska had given him a car on 6 December, as it should have done, he'd have been without one again by the new year.

Mr C's health is clearly another major concern for him. As I understand it his mental health became affected by the difficult financial position he found himself in in late 2021 and early 2022, which worsened as time went on. But it was also affected by worries about his physical health. Mr C has a condition that requires management by medication. And any break in taking medication can affect the long-term prospects for the progress of that condition. At the time of the accident Mr C had been due to pick up a prescription of medication from what had been his local hospital – which, in December 2021, was then over 100 miles from Mr C's home. Mr C had planned to drive and get the medication – but without a car, and with stretched finances, felt it just wasn't possible for him to get there. The medication Mr C had, ran out in early January and he wasn't able to get more until the end of January 2022.

I really appreciate that this was a very worrying time for Mr C. And I think it's clear to see that, in December 2021, he had some very difficult things to wrestle with. But I bear in mind that on 15 December 2021, even with Astrenska having so far failed to provide the car to Mr C for nine days, and with only a few weeks of medication left, Mr C did take a train journey of some 250 miles which he has asked Astrenska to reimburse him for. He's said this was to collect some items from another storage unit he had, which he'd have otherwise done by car at a lower cost. Clearly these items must have been vitally important to Mr C. But so was his medication – and a train journey from Mr C's home to that hospital would have cost much less than the journey he took to collect belongings.

Difficult though the situation was, I think Astrenska's failure in the days after the incident, to provide the services contracted for, should reasonably have put Mr C on notice that it was not honouring the contract and there was a distinct possibility that it never would, that a car was not going to be made available to him. And though I appreciate the many difficulties Mr C faced, he had a responsibility to mitigate the unfair and unreasonable position Astrenska had left him in. In the circumstances, I think it would've been entirely reasonable for Mr C to have taken steps which meant his health was prioritised. Let me be clear, Astrenska should not have left Mr C in a position where he was having to choose which was most important to him, vital belongings or his health. It was entirely unfair and unreasonable of it that the cover he had chosen to pay for did not provide the service promised. He could likely have travelled by car to both destinations for the price of the train tickets he's asked Astrenska to reimburse. So I do think that him having to make this difficult choice was its fault – but I trust Mr C will understand that I can't blame it for the ultimate decision he came to, which resulted in him running out of medication in early January 2022. Which means I also can't blame Astrenska for the upset and worry, including any effects on his mental health or impact on his physical condition which he experienced as a result of that.

As I've noted above, the travel costs Mr C would like Astrenska to reimburse are, I think, a cost he'd always have had. Not caused by travelling in that way – but by the cost of fuel and other applicable charges incurred driving to both of those destinations. So Astrenska's failure did not cause him to spend funds that would otherwise have remained at his disposal. So I can't reasonably require Astrenska to reimburse that outlay.

I'm conscious that, when Mr C reads this, by this point in my decision, he will likely be very upset, and maybe even angry with my findings. I completely understand that – he has suffered a lot and, as I mentioned above, from his point of view it all flows back to this error by Astrenska. I do hope that Mr C will be able to see from my findings though why I can't reasonably come to that conclusion. I also hope he'll be able to see that I have found that Astrenska did fail him and that I do think it left him in an extremely difficult position at a time when things were already stretched, and when he'd acted prudently, by taking out this cover, to try and avoid such a negative situation from occurring.

It's also quite clear to me that, by 18 December 2021 Mr C had been putting in a lot of effort to try and get answers from Astrenska. This is explained in his email to it of that date and includes time spent on hold calling it and requested call backs not being honoured. And in that email Mr C explained that his mental health was being affected by not having a car (as he reasonably should have had under the cover). Mr C then spoke with Astrenska on 20 December 2021, and it received his email that day too. But still a car wasn't provided and seemingly all Astrenska did in response to the email contact was get in touch with Mr C's car insurer. This was a situation which seemed to reoccur in January 2022, with Astrenska, albeit it was A on its behalf, never accepting that it needed to act to give Mr C a car. I can understand how frustrating this was for Mr C and I accept it won't have helped his state of mind at that time.

So Astrenska's failure made Mr C's already difficult position much more precarious, causing him more worry and, at times, to have had to make impossibly difficult choices. I'm also satisfied its intransigence and refusal to assist likely did have some impact on Mr C's state of mind. And Mr C clearly put in a lot of effort to try and resolve things, all to no avail. It is in light of all of that, that I do think total compensation of £750 is fairly and reasonably due.”

Astrenska did not reply to my findings.

Mr C said he disagreed with them. He said:

- My partiality had to be questioned.
- I overlooked that he had already given notice on the storage unit he emptied on 15 December.
- It's not reasonable for me to ask the open question of how 21 days of car hire would have changed things – clearly he'd have got his items out of the other storage unit.
- I've shown ineptitude by saying he had a duty to mitigate, when that is exactly what he did on 15 December by "closing a virtually empty storage unit".
- Astrenska didn't give him any notice it was breaching/going to breach their contract, so what possible mitigation action could he have taken, especially given the notice to quit.
- The decision has been written with the intention of personally insulting him, but only insults the Ombudsman herself.
- He had an issue with his bank in November and December too – which has also been the subject of a complaint to the Financial Ombudsman Service.

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 acknowledge and understand the impact of my provisional findings on Mr C and can assure him that they were not written with any ill-intent towards him. I really appreciate that he was left in a very difficult position by Astrenska's failure – that it failed him when he needed it and he was left in a very difficult position as a result. But, in order to determine what Astrenska must do to put that right, I have to make decisions about how that failure affected Mr C – what would have happened but for its failure. And, on this occasion my view on that is different from the view Mr C holds. I'm sorry for the upset my views in this respect have caused Mr C and will cause him on receipt of my final decision.

I was aware that, before 6 December, Mr C had given notice to quit the unit he closed on 15 December. But I didn't, and don't, think that was a good reason to prioritise travelling to that unit over very serious and significant health matters which could otherwise have been attended to. Of course Astrenska did not give Mr C formal notice that it was going to breach their contract. But I think it's actions in the days after 6 December, before Mr C took his journey to the nearly empty storage unit on 15 December, made it clear that it was not performing as contracted, and likely would not do so.

Mr C may well have had issues with his bank. But I haven't seen that they impacted the situation I'm considering here.

Having considered the complaint again, even in light of Mr C's comments made in reply to my provisional findings, my view hasn't changed. With regret for the upset this will cause Mr C, my provisional findings, along with my comments here, are now the findings of this, my final decision.

Putting things right

I require Astrenska to pay Mr C a further £600 compensation, where my total award is £750 but £100 has already been paid.

My final decision

I uphold this complaint. I require Astrenska Insurance Limited to pay the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 April 2023.

Fiona Robinson
Ombudsman