

The complaint

Mr P complains about the level of service provided by U K Insurance Limited (UKI) under his motor insurance policy following an incident with a third-party also insured by them.

What happened

The background to the complaint is known to all parties so I won't repeat it here. Instead I'll summarise my understanding and focus on giving the reasons for my decision.

Mr P was involved in an incident with a third-party – also insured by UKI – in mid-2022. The third-party was to blame for the incident. Mr P contacted UKI and recovery was arranged, but it took several hours for it to happen, and Mr P says he was left stranded without food, water, or medication. Mr P's disabled and was injured as a result of the incident.

UKI contacted Mr P, acting in their capacity as the insurer of the third-party, to offer their services to progress matters – such as arranging a hire car, appointing solicitors, and settling Mr P's car damage, amongst other things. Mr P says things were handled poorly from the outset due to poor communication, delays, and UKI lost his car, so he complained. UKI responded to complaint points across several final response letters sent in August and September 2022. They offered to pay Mr P £750 in total for the service issues. They also said other matters Mr P complained about were the responsibility for the third-party insurer – in this case UKI as well – to respond to. Mr P wasn't happy with UKI's responses, so he asked our Service for an impartial review.

I issued my provisional decision on 17 April 2023 which set out the following:

“What I've provisionally 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

UKI acting in their capacity as the insurer of the third-party

Several matters complained about by Mr P arise from UKI acting in their capacity as the insurer of the third-party. Mr P was contacted after the incident by UKI to offer services in this capacity to settle their policyholder's claim and indemnify Mr P (as the third-party) for any legal liability they had to him. This included, arranging a hire car, and settling Mr P's car damage, amongst other things.

Our Service doesn't have a free hand to consider every complaint referred to us. The rules that set out what complaints we can consider are the Dispute Resolution rules (DISP) in the Financial Conduct Authority's handbook. This means I can only consider a complaint if I have the power to do so. The relevant rules say that in order to bring a complaint, a complainant must be eligible. There are two parts to the test – the person bringing the complaint and the relationship they have with the business being complained about. Both parts of the test must be met. The relevant rules to this complaint say:

“DISP 2.7.1 A complaint may only be dealt with under the Financial Ombudsman Service if it is brought by or on behalf of an eligible complainant.”

DISP 2.7.3 says an eligible complainant must be a person that is a consumer. Mr P is a consumer because he’s acting for purposes outside his trade, business, or profession. So, Mr P meets the first part of the test. However, under DISP 2.7.6 it says:

“To be an eligible complainant a person must also have a complaint which arises from matters relevant to one or more of the following relationships with the respondent:

- (1) the complainant is (or was) a customer, payment service user or electronic money holder of the respondent;*
- (2) the complainant is (or was) a potential customer, payment service user or electronic money holder of the respondent;*
- (5) the complainant is a person for whose benefit a contract of insurance was taken out or was intended to be taken out with or through the respondent;*
- (6) the complainant is a person on whom the legal right to benefit from a claim against the respondent under a contract of insurance has been devolved by contract, assignment, subrogation or legislation (save the European Community (Rights against Insurers) Regulations 2002)”*

I recognise and understand it can be confusing where an insurer is insuring both parties involved in an incident. But that does mean there are two contracts of insurance involved here – and Mr P is only party to one of them. The majority of the claim was settled as part of UKI’s obligation in the contract of insurance between them and the third-party to blame for the incident. Mr P wasn’t party to this contract of insurance, nor was it taken out by the third-party for Mr P’s benefit directly or indirectly.

Therefore, Mr P doesn’t meet the second part of the test because the contract of insurance in question (the policy the majority of the claim was settled under) was between UKI and their policyholder. UKI were settling their policyholder’s claim and indemnifying Mr P for any legal liability they had to him under that contract of insurance he wasn’t party to. So, Mr P isn’t eligible to bring matters arising from UKI acting in their capacity as the third-party’s insurer to our Service. These matters fall outside our jurisdiction.

UKI acting in their capacity as Mr P’s insurer

Mr P raised several customer service issues which were resolved by UKI by paying compensation, so I haven’t included these aspects within my decision. Instead, I’ve focused on what I consider to be the pertinent points, which follow:

- the level of service provided to Mr P by UKI on the day of the incident*
- the level of service provided by UKI to Mr P in their capacity as his insurer*
- the delays in appointing a solicitor*
- the Guaranteed Hire Car Plus cover under Mr P’s insurance policy*

I’ll address each point in turn.

The level of service provided to Mr P by UKI on the day of the incident

Mr P was left stranded for several hours in a dangerous place without food, water, or medication, while awaiting recovery following the incident. And says UKI kept him on the

phone for longer than necessary which drained his battery, meaning he couldn't contact anyone to help him.

UKI say their recovery agent aims to make recovery within one hour, but this varies depending on the number of callouts and they prioritise customers in difficult circumstances – such as needing recovery from a motorway. Given Mr P's circumstances – he's disabled and was injured during the incident – he ought to have been given more priority on the incident day. UKI let him down here, and while they acknowledged this by compensating Mr P £200, I find this should be increased by a further £500 to recognise the impact their failings had on Mr P on the day. So, I currently intend to require UKI to pay Mr P a further £500.

The level of service provided by UKI to Mr P in their capacity as his insurer

As mentioned above, I'm unable to consider the actions of UKI when acting in their capacity as the insurer of the third-party. But that doesn't mean UKI had no obligation – as Mr P's insurer – to provide him with a good level of customer service. I think they failed to do this at times and caused confusion over which issues were being handled by which party – and in what capacity.

For example, Mr P's car went missing for a period which left him chasing UKI for updates. I note the car was handled under the third-party's contract of insurance with UKI – not Mr P's – but there was still a responsibility for UKI as Mr P's insurer to keep him updated, and ensure the car was kept in a safe and secure location. Given Mr P found it had gone missing, I've no doubt this would have caused him further worry and concern during what was already a difficult time. I don't find UKI handled this matter particularly well, so I currently intend to require UKI to compensate Mr P a further £100 in respect of the level of customer service provided while the claim was running.

The delays in appointing a solicitor

Mr P says despite UKI being aware of the need to appoint a solicitor promptly, they caused avoidable delays and were obstructive. Our investigator recommended UKI pay Mr P £150 compensation, and UKI responded to say they had addressed this matter in September 2022 and offered to pay Mr P £100. Our investigator hadn't had sight of this final response letter ahead of their assessment.

All things considered – while there were some delays in appointing a solicitor, I'm satisfied UKI took reasonable steps to acknowledge the inadequate level of service provided here by paying Mr P £100, so I currently don't intend to require UKI to increase this.

The Guaranteed Hire Car Plus cover under Mr P's insurance policy

Mr P's policy schedule shows he had Guaranteed Hire Car Plus. And the policy says this is designed to keep a policyholder mobile following an incident. It also says if UKI cannot provide a hire car they'll cover travel costs up to £50 per day if the following applies:

- 'Your car has been professionally adapted to carry a disabled driver or passenger and a suitable **hire car** is not available.
- There are no **hire cars** available, and no alternative cars are available for hire.'

Mr P says he was without a hire car for five days and therefore immobile despite being reliant on a car. And says UKI should pay him £50 per day for these five days. UKI didn't agree to this. They say Mr P accepted services from UKI in their capacity as the insurer of the third-party, so they wouldn't invoke the policy entitlement on Mr P's policy given he didn't claim under this contract of insurance. I don't think that's reasonable. I say this because it

doesn't seem Mr P was given much other choice but to agree for matters to be dealt with in this way – under the third-party's contract of insurance with UKI. And while I'm aware Mr P agreed for this to happen, it doesn't seem likely he was informed that by agreeing to this, he wouldn't be able to use policy benefits such as this one.

The terms clearly state UKI will repay travel costs which have been paid upfront by a policyholder, and then receipts or proof of travel must be provided to UKI for consideration. So, if Mr P can provide UKI with this information to show he incurred travel costs over those five days, UKI should cover these costs up to the policy limit.

Summary

For the reasons I've mentioned above, while I'm sorry to disappoint Mr P, I'm unable to consider any complaint points in relation to UKI when acting in their capacity as the insurer of the third-party. Mr P isn't eligible to bring a complaint to our Service in this respect, so they fall outside our jurisdiction.

Mr P had a terrible time of things and I find UKI let him down at times when failing to provide a good level of customer service, and causing confusion, amongst other things. So, I currently intend to require UKI to pay Mr P a further £600 compensation for any distress and inconvenience caused. This is in addition to the £750 compensation offered to Mr P by UKI within their final response letters from August and September 2022.

I haven't considered complaint points Mr P raised that UKI responded to within their final response letter in early-2023, as that matter is to be considered under a separate complaint.

My provisional decision

My provisional decision is I uphold the complaint. I currently intend to require U K Insurance Limited to:

- *Pay Mr P £600 compensation for any distress and inconvenience caused; and*
- *Consider Mr P's claim under the Guaranteed Hire Car Plus section of the policy upon evidence of travel costs he incurred during the five days he was without a car."*

Responses to my provisional decision

UKI responded to my provisional decision and made the following comments:

- UKI say on the date of the incident Mr P was at a business park which they didn't consider to be a dangerous location. They also say there are several businesses in this area Mr P could have approached for facilities. And although they acknowledged Mr P having to wait four hours for recovery wasn't reasonable, they felt the £200 compensation they initially offered was fair.
- UKI don't think they should be held responsible for Mr P's car going missing and directed Mr P to the third-party insurer after trying to do as much as they could to help locate the car.
- They say Mr P's claim under the Guaranteed Hire Car Plus section of the policy should be directed to the third-party insurer. They say if they pay this claim under Mr P's policy these costs cannot be claimed back. So, they suggested Mr P approaches the third-party insurer in the first instance, and if they refuse to cover these costs, UKI (as Mr P's insurer) will consider any evidence of travel costs over those five days further.

Mr P responded with the following comments:

- He no longer has a copy of travel expenses incurred over the five-day period without a car, and the policy says he is due £50 per day, so he never kept these.
- Prior to the mid-2022 incident with the third-party, he says he made a windscreen damage claim to UKI which was poorly handled. And this resulted in his windscreen damage claim not being settled before the mid-2022 incident which resulted in his car being deemed a total loss. He says the third-party insurer made a deduction to the pre-accident value of his car for the condition of the windscreen, and says he wouldn't have suffered this loss had UKI settled this windscreen claim under his policy.

Since I issued my provisional decision this Service has made enquiries with UKI to understand whether any deductions were made from the settlement due to the condition of the windscreen, but they were unable to say whether it was or not as it was handled by the third party insurer.

As all parties have responded to my provisional decision with their comments, I'll now set out my final decision, which follows.

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.

Guaranteed Hire Car Plus cover

Mr P says he's unable to provide proof of travel costs given the time that's passed. The policy says it'll only respond to a claim under this section upon proof of costs incurred. So, it's unlikely under the strict application of the policy terms UKI is liable for these costs. That being said, however, it seems most likely Mr P did incur some travel costs during this five-day period given he relies on a vehicle to get around. So, I think the fairest way to resolve this aspect of the complaint is to include it as part of the overall compensation amount I'll be directing UKI to pay him. I'll return to this aspect later.

Compensation

UKI thought the additional £600 compensation I provisionally set out was too high given what they had already offered Mr P. They say on the day of the incident Mr P was located near a business park close to local businesses for access to facilities. They also say although Mr P reported the incident around 9:30am, it was said a third-party would assist Mr P. Then, around 1:30pm, Mr P confirmed he needed UKI's assistance, and recovery was made around 5:00pm. They offered to pay Mr P £200 compensation for the poor service here. They also say they shouldn't be held responsible for his car going missing as that was a matter for the third-party insurer to consider. And in any case, they said that, when they were made aware of this, they took reasonable steps to try and help locate it.

I think UKI made some fair points when responding to my provisional decision. But I see no reason to deviate from the compensation amount I provisionally set out. I say this because I find further consideration ought to have been given to Mr P's circumstances on the day of the incident. He's disabled, was injured during the incident, and despite this, was made to wait far too long to be recovered. As part of my thinking on what amount of compensation is fair and reasonable, I also considered the overall level of service provided to Mr P while the claim was running. Namely: the communication and level of confusion caused over which entity was handling which claim aspect, and in what capacity. I maintain it's fair to conclude

Mr P had a terrible time of things – UKI should have handled matters much better, and with a higher level of customer service.

Returning to the Guaranteed Hire Car Plus matter. I've given thought to what the policy says, the lack of evidence available to support Mr P's claim, and the total compensation amount I'll be requiring UKI to pay Mr P. Overall, I think £600 compensation fairly recognises both the service issues Mr P faced here, and the fact he was without use of a vehicle for a short period of time which resulted in him having to find other means of travel and likely incurring some costs. There are further considerations I've taken into account when considering the compensation amount appropriate here, which I've set out below in my summary.

Windscreen damage claim and the impact on Mr P

Mr P says prior to the mid-2022 total loss claim, he reported a separate windscreen damage claim to UKI that was handled poorly. He says UKI's agents delayed settling the claim which meant the windscreen damage was still present when the mid-2022 incident occurred with the third-party. He says the third-party insurer made a deduction to the total loss settlement due to the windscreen condition. And had UKI settled the windscreen damage claim under his policy, he wouldn't be at a loss in this respect.

UKI say the total loss settlement for the mid-2022 claim was handled by the third-party insurer. It's important I explain I'm not considering whether the total loss settlement given by UKI – acting in their capacity as the insurer of the third-party – is fair. I say this because, as set out above, this matter falls outside our Service's jurisdiction. Rather, here, Mr P says he's suffered a loss as the windscreen damage – that should have been dealt with by UKI as his insurer in the first claim – wasn't resolved. And he says this resulted in a settlement deduction.

I find it's reasonable to consider this aspect as part of my decision. I say this because our investigator considered the handling of the windscreen claim, and Mr P says he suffered a financial loss as a result which I'm satisfied is ancillary to the windscreen damage claim made prior to the mid-2022 total loss claim. And ultimately, what I'm being asked to consider is whether Mr P has lost out because of UKI's delay in handling his windscreen claim.

Neither party has shown that a deduction to the total loss settlement was made by the third-party insurer as the result of the windscreen condition. But UKI should cover the difference in the total loss settlement value for any deductions made for the windscreen condition if Mr P can show this happened.

Summary

Mr P had a terrible time of things and UKI should have handled matters better, and with a higher level of customer service. I'm satisfied an additional £600 compensation for the service issues Mr P faced to be fair, reasonable, and proportionate here. I also think this recognises Mr P's natural concerns over the potential total loss settlement deduction for the windscreen condition, and costs he likely incurred while not having a vehicle over that five-day period.

I'm satisfied it's reasonable to include Mr P's concerns over whether a deduction to the total loss settlement was made as the result of the windscreen condition in my decision. If Mr P can demonstrate he's suffered a loss in this respect, UKI should pay him the difference for any deductions made by the third-party insurer for the windscreen condition. They should also pay him 8% simple interest from the date he received the total loss settlement until UKI pays the difference back to him.

Putting things right

I've set out below what UKI must now do to put matters right for Mr P.

My final decision

For the reasons I've given above, my final decision is I uphold the complaint. I now require U K Insurance Limited to:

- Pay Mr P £600 compensation – in addition to what they previously offered to pay him – for any distress and inconvenience caused; and
- Upon Mr P evidencing this, pay him the difference for any deductions made by the third-party insurer to the total loss settlement for the windscreen condition. And include 8% simple interest* on that payment, from the date Mr P received the total loss settlement, to the date U K Insurance Limited pays the difference back to him.

*If U K Insurance Limited considers that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr P how much they've taken off. They should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 9 June 2023.

Liam Hickey
Ombudsman