

The complaint

Mr O has complained about the actions of Highway Insurance Company Limited (HICL) in referring him to a hire car company after a non-fault accident.

What happened

Mr O held motor insurance with HICL. His car was hit while parked, so Mr O called HICL to claim. As it was a non-fault accident, HICL referred Mr O to a hire car company, that I will refer to as P. P provided Mr O with a car through a credit hire agreement. This means that Mr O entered into a separate agreement with P. The car was provided outside of his insurance policy with HICL and the costs recovered directly from the third party insurer.

The third party insurer did not agree to pay Mr O's hire car costs which meant that Mr O was asked to attend court via a video link.

Mr O complained to HICL as he was not happy that it had referred him to a separate company. He was distressed at the prospect of attending court and the implications of the outcome of the hearing.

HICL said Mr O would not become liable for the costs of the hire car and it did not think it was likely that he would have to attend court. However, it said that he had entered into an agreement with P and, as such, HICL could not instruct P to prevent legal proceedings.

Unhappy with HICL's response, Mr O brought his complaint to our service. He said he had not asked for a car, other than any available under his policy, and he had not appointed P separately. He said he was offered the car by HICL but had not been told that he was entering into a separate agreement, or about the potential costs or other implications. He explained the distress and inconvenience he had experienced as a result of being referred to P. Mr O was also worried about the impact the outcome of the court hearing could have on him personally.

While Mr O's complaint was with our service the first court hearing was adjourned but he ultimately did attend court via video link a couple of months later. The outcome of the hearing was that the third party insurer paid the hire costs and Mr O received payment to compensate for his time in attending the court.

Our Investigator looked into Mr O's complaint and recommended it be upheld. She did not think that HICL had provided clear information to Mr O when referring him to P. She did not think it was likely that Mr O would have decided to use P if HICL had been clear and thought that HICL's error had caused Mr O distress and inconvenience. To compensate him, she recommended that HICL pay Mr O £400 for the unnecessary distress and inconvenience.

HICL asked for an Ombudsman's decision. It said it had followed its working practices and it should be taken into account that Mr O had signed up to P's terms and conditions.

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.

When HICL referred Mr O to P it was obliged to provide him with information that was clear, fair and not misleading, in line with its obligations under Principle 7 of the FCA Handbook: Communications with clients (see PRIN 2.1R The Principles) and ICOBS 2.2.2R (Clear, fair and not misleading rule). In the circumstances of this case, this means that when Mr O contacted HICL to claim it ought to have provided him with clear information about his options, so he could decide how best to proceed with his claim.

I've started by considering the information that HICL provided to Mr O during his claim and I've listened to calls between Mr O and HICL but none of the calls appear to be the first notification of loss call. The order of the calls is not clear, although they all seem to have taken place before Mr O received the hire car. As this complaint is regarding Mr O's referral to P, I have focused on those parts of the call in this decision.

In one call, Mr O said that he'd been told that he could have a standard courtesy car which could be upgraded. He said HICL then told him he would get a standard courtesy car. He said that was fine but wanted to know what was going on with his claim. HICL said courtesy vehicles were usually provided by the garage.

In a second call, Mr O said that P called him and said that because he wasn't at fault his car could be upgraded. However, P said that if the third party did not accept liability he might become liable for the whole cost. Mr O was concerned that he might become liable for the costs. During the call HICL confirmed that it had not arranged a hire car because liability had not been agreed. HICL's agent put Mr O through to another department and he reiterated these points, along with other concerns about his claim. HICL said that P was a separate company and the car would be provided under credit hire. It said P had separate terms and conditions and they would try to recover costs from the third party. HICL reassured Mr O that the other insurer had accepted liability. Mr O also asked about getting repairs done himself and not having a hire car.

In a third call, HICL said it had sent a referral through to P and if P did not feel it would be able to recover its costs then the fallback position will be a courtesy car from the garage repairing Mr O's car. HICL said this wouldn't be on a like-for-like basis.

In a fourth call, Mr O referred to being told that he had standard courtesy car cover under his policy but as the incident was non-fault, he could receive an upgraded like-for-like car. Later in the call, HICL told Mr O that a referral to P is "credit hire" and also on the basis that P are confident that they would be able to recover their costs. HICL said it sounded as though it hadn't been explained properly to Mr O.

As I have not been provided with the first notification of loss call it's impossible to know exactly what HICL initially told Mr O in relation to a hire car. But, without the call, I am more persuaded by what Mr O has said that there was not clear information provided about the referral to P. This is because in the calls I have listened to, Mr O does not appear to have understood exactly what the referral to P meant.

During the other calls, HICL did provide Mr O with some information which let him know that P was a separate company and that P would be provided through credit hire but I do not think that made it clear what that meant. I do not think that HICL established whether Mr O needed a like-for-like hire car, or that it told Mr O about the advantages and disadvantages of using P in a balanced way so that he could decide which option he wanted to use. It also

did not tell Mr O that he would be entering into an unregulated hire agreement and may not be able to complain to our service if he was unhappy with P's actions.

I appreciate that Mr O signed an agreement to use P's services, but I do not think the referral was clear enough for him to understand the implications of this.

As I do not think that HICL provided Mr O with clear, fair and not misleading information I have to consider what he would have done if the information had been clear as well as the impact of the poor referral on him. Having done so, I am not persuaded that Mr O would have used P. Mr O's policy provides for a courtesy car while his is being repaired and during the calls he did not express any particular need for a like-for-like vehicle. He also asked about getting the repairs done himself and not having a hire car. This supports that Mr O did not have a need for a like-for-like hire car.

HICL said that after being referred to P, Mr O was told the following by P:

"[P] will be supplying you with a replacement vehicle, this is not a free courtesy car, but the good news is based on the circumstances you have described to me, it would suggest you are not at fault and we will be providing you with a hire car on a credit basis, whilst you are responsible for these charges, these charges are deferred and you are not being asked to pay right now and our commitment to you is to recover these charges from the at fault driver's insurer. On the rare occasion we may encounter issues with these insurers and at this point we will require your further assistance and with your full co-operation we will recover these charges, is that ok?"

I cannot consider the actions of P in this decision and I have also not been provided with a copy of this call. However, even if I accept that Mr O agreed to this, I do not consider that it means he would have agreed to use P if the information from HICL was clear. This is because, the information P gave does not sufficiently explain the advantages, disadvantages or that this isn't a usual part of claiming on Mr O's own insurance policy.

So, while it's impossible to know what would have happened if Mr O had been given clear information, I have to reach a decision based on what I think is more likely than not. And I haven't seen anything persuasive to indicate that Mr O would more likely have used P if he had been given clear information.

I have therefore gone on to consider the impact of the poor referral on Mr O. It's clear from the information provided that Mr O has been extremely anxious about having to attend court via video link and about the implications of the hearing. I think this would likely have been avoided if he had used the courtesy car available from the garage as there wouldn't have been costs to recover. He has also had the inconvenience of one court hearing being adjourned, although he has been compensated for the time he needed to take off work to attend court.

Putting things right

I believe that HICL caused Mr O unnecessary distress and inconvenience through its poor referral to P and I think it is fair and reasonable for HICL to compensate him for that. On balance, I think that £400 is a fair and reasonable amount for HICL to pay Mr O to compensate for the unnecessary distress and inconvenience it caused.

My final decision

My final decision is that I uphold this complaint and require Highway Insurance Company

Limited to do as set out in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 17 July 2023.

Sarann Taylor
Ombudsman