

## **The complaint**

Mr C complains about Accredited Insurance (Europe) Ltd (“AIL”) and their decision to decline the claim he made on his motor insurance policy.

## **What happened**

Mr C held a motor insurance policy, underwritten by AIL. Unfortunately, on 31 December 2022, Mr C’s car seized after driving through a flooded area of road. So, he contacted AIL to make a claim on his insurance policy.

But AIL declined Mr C’s claim. They felt Mr C had failed to safeguard his car when driving through the flooded area. And so, they felt the claim was excluded under the terms and conditions of the policy. Mr C was unhappy with this decision, so he raised a complaint.

Mr C didn’t think AIL’s decision to decline the claim was fair. He thought he’d acted reasonably, given the circumstance he found himself, when driving through the flooded road. So, he didn’t agree that he’d deliberately caused damage, or acted negligent in some other way. And because of this, he wanted AIL to overturn their decision and accept the claim.

AIL responded to the complaint and didn’t uphold it. They thought Mr C had taken the conscious decision to drive through a body of water, and they thought Mr C could’ve acted differently, for example taking an alternative route. So, as this water led to the damage to the car, they felt their decision to decline the claim was a fair one and didn’t think they needed to do anything more. Mr C remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it. They didn’t think AIL had acted fairly when relying on the exclusion they referenced to decline Mr C’s claim. Our investigator didn’t think AIL had evidence that Mr C had deliberately damaged his car or acted in a negligent way. So, our investigator thought AIL should reassess the claim against the remaining terms and conditions of the policy, without the exclusion condition they referenced when declining the claim initially.

Mr C accepted this recommendation. But AIL didn’t. While they recognised the risk posed to Mr C at the time he chose to drive through the water was minimal as other cars had passed it successfully, they thought a risk still remained and that Mr C could’ve avoided the damage had he taken a different action. So, while they accepted Mr C’s actions may not have been deliberate, they didn’t think Mr C had taken reasonable steps to protect the car. And because of this, they maintained they were fair to rely on the exclusion and decline the claim. As AIL didn’t agree, the complaint has been passed 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’m upholding the complaint for broadly the same reasons as the

investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

When considering whether a business such as AIL has declined a claim fairly, I must be satisfied AIL first acted within the terms and conditions when declining the claim. And where an exclusion is relied upon, the onus is on the insurer to show that the exclusion applies.

In this situation, I don't think AIL have satisfied me that the exclusion has been fairly applied on this occasion. And I'll explain why.

I've seen in the decline letter sent to Mr C on 13 January 2023 that AIL felt Mr C had failed to comply with the condition of the policy that states AIL won't cover "*deliberate loss or damage to your car caused by anybody insured by this policy*".

In this situation, AIL have said that, as Mr C chose to drive through the body of water, he did so knowing there was a risk of damage and so, any claim for this damage falls under this exclusion. AIL have also explained that it is their right under the policy to "*admit negligence for any accident or claim on your behalf*". And as they felt Mr C had failed to adhere to the condition which states he must "*protect your car from loss or damage*" they thought they were fair to decide Mr C had acted negligently here. But I don't agree.

It's not disputed by either Mr C or AIL that, on the night of the damage, Mr C stopped his car to assess the level of water flooding the road he was travelling down. And Mr C's testimony that other cars had passed through this body of water in front of him, and coming the opposite way, is also accepted and not in dispute. So, I think it's fair for me to rely on this version of events.

I also have to consider that, at the time Mr C took the decision to pass through the body of water, it was dark and on a narrow country lane with traffic behind him and passing on the other side of the road. Mr C has provided a video depicting the exact area of the road where the body of water was at around the same time of night and AIL have accepted this is a different area to the images they assessed, and that these images were also taken at another time of day.

So, I've thought about this version of events to think about the actions Mr C took, and whether I think they were negligent. And to do this, I've thought about whether I think Mr C took an action that the majority of people in his situation wouldn't have done. And I don't think that's the case here.

Considering the time of night and the impact this would've had on his ability to assess the body of water, the size of the road and difficulty Mr C would've had in turning around and the fact other cars were passing through the water in both directions without encountering difficulty, I think Mr C's decision to proceed was a reasonable one. And so, I don't think it's fair for AIL to say Mr C acted negligently, or that he failed to take reasonable steps to protect his car from loss or damage. In fact, I think Mr C taking the time to assess the situation showed him taking reasonable steps to try and ensure the safety of his car at that time.

The exclusion AIL have relied upon states explicitly that AIL won't cover damage caused deliberately. Considering the above, and the evidence provided to me, I don't think AIL have satisfied me, on the balance of probability and beyond reasonable doubt, that Mr C took an action with the deliberate intent of damaging his car. In fact, I think his actions show the opposite. And because of this, I don't think AIL have acted fairly when declining Mr C's claim, relying on this exclusion. As I don't think AIL have acted fairly, I've then thought about what I think AIL should do to put things right.

## **Putting things right**

Any award or direction I make is intended to place Mr C back in the position he would've been, had AIL acted fairly in the first place.

In this situation, had AIL acted fairly, I don't think they would've relied on the deliberate damage exclusion to decline Mr C's claim. So, to place Mr C back in the position he would've been, I think AIL should reassess the claim without this exclusion. I think this is the fairest course of action, which falls in line with our service's approach to situations such as this one.

If following this reassessment there are no other applicable exclusions, I'd expect AIL to pay the claim.

I understand AIL are unlikely to agree with this outcome. And I want to reassure AIL I've considered their comments which set out their rationale and logic for declining the claim and the use of the deliberate damage exclusion. But I hope this decision sets out the way I've considered the complaint and the claim circumstances, and why I think they've acted unfairly on this occasion, in this individual circumstance.

## **My final decision**

For the reasons outlined above, I uphold Mr C's complaint about Accredited Insurance (Europe) Ltd and I direct them to take the following action:

- Reassess Mr C's claim without the deliberate damage exclusion to determine whether the claim is one that is valid and should be accepted.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 July 2023.

Josh Haskey  
**Ombudsman**