

## **The complaint**

Mrs K is complaining that she's out of pocket after she tried to contact Atlanta Insurance Intermediaries Limited (Atlanta) to claim through her car insurance policy after she was involved in a non-fault accident.

## **What happened**

In May 2022 Mrs K's car was damaged in a car park after being hit by a third party's car. So she contacted the telephone number in her car insurance documents– that was arranged by Atlanta – to look to claim for the damage to her car. The claim was subsequently handled by a third-party accident management company (AMC).

Mrs K is unhappy with the way the AMC has handled the claim – in particular that it didn't obtain the CCTV of the carpark which she says was available. So she said this meant she hasn't been able to pursue the third party.

Our investigator partially upheld this complaint. She explained that, when Mrs K first called to report the incident, she was immediately put through to the AMC who handled the call on Atlanta's behalf. However she explained that this Service didn't have jurisdiction to consider the AMC's actions in handling Mrs K's claim as the type of agreement Mrs K entered into with the AMC wasn't a regulated agreement.

However, the investigator did explain that we could consider the actions of Atlanta. She said Atlanta were a broker, but also administered the policy on behalf of the insurer. She said Atlanta should have ensured that Mrs K was given a choice as to whether she wanted to claim on her insurance policy or to use the facilities the AMC provided. She also said that it should have considered whether the circumstances of the accident were suitable for referring to an AMC.

The investigator explained that Atlanta had outsourced the handling of claim calls to the AMC. But she thought the AMC was essentially acting on behalf of Atlanta in handling the initial call when Mrs K called to report the claim. So the investigator thought Atlanta could be held responsible for anything the AMC did or didn't do during the call – including not assessing whether it was suitable to enter into an arrangement with the AMC.

The investigator didn't think Mrs K should have been referred to the AMC because her car was hit while parked, and by the time she'd discovered the damage, the third party had already fled the scene. So, Mrs K had no information about the third party to share. So she didn't think there were details of who the AMC could have recovered any costs from.

The investigator thought more could have been done to manage Mrs K's expectations at the beginning – such as explaining the time restraints on CCTV footage requests, and that there could also be a possibility the incident wasn't seen by the cameras. Meaning she may have to make a claim on her own policy and if costs couldn't be recovered it would be considered as a 'fault'. And she said, had this been explained to Mrs K, she would have better understood all available options.

The investigator further said that, given Mrs K was referred to the AMC, it's possible it may look to recover these losses from Mrs K directly. She also said she understood Mrs K still hadn't had her car repaired. So she thought Atlanta should:

1. Pay £150 in compensation for the poor referral; and
2. If the AMC contacts Mrs K to recover any costs it incurred, Atlanta should indemnify her and cover these costs.

Mrs K responded to accept the investigator's opinion, but also added that she was told her car was seen on the CCTV footage being hit. Atlanta didn't respond to the investigator, so the complaint's been passed to me to decide.

### **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've come to the same conclusion as the investigator and I'll now explain why.

I first need to make clear that, in this decision, I'm only considering Atlanta's liabilities towards Mrs K. I'm aware that there have been other businesses involved in this incident – including the AMC. But, apart from where the AMC could reasonably be held to be agents of Atlanta, I'm not able to comment on anything it did or did not do.

It's important to set out that, when Mrs K first looked to contact Atlanta following the accident, she was doing so with the intention to claim for the damage to her car through her insurance policy. However, following the call, the AMC took over the handling of the claim. This was an arrangement outside of the terms of the insurance policy – i.e. no claim was ever made under the insurance policy and the insurer has confirmed this.

The AMC is not a party to this complaint, so I cannot comment on the way it has handled Mrs K's claim. We also do not have jurisdiction over the way it's handled the claim, as these are not 'regulated activities' covered by our dispute resolution rules. As Mrs K entered into an entirely separate contract to her insurance policy, Atlanta isn't liable for anything the AMC did or did not do in the handling of the claim – including not obtaining the CCTV footage.

We can, however, look at how a consumer entered into such an arrangement instead of claiming through their insurance policy. In short, I need to think about whether Mrs K was given enough information to make an informed choice about whether she wanted to claim through her insurance policy or to have the repairs carried out through the use of credit hire and repair. In particular I would have expected, as a minimum, that Mrs K would have been told the following:

- In entering into a credit hire agreement, she wasn't claiming through her insurance policy, but she had the option to do so. And she should have been given a clear choice about whether she wanted to claim through her insurance policy instead.
- The credit hire provider was a separate business to the insurer.
- She may be liable for any outlay – including hire charges – if they're unable to recover the costs from the third party. And it should have explained the likelihood of being able to recover this outlay by assessing whether the circumstances of the incident were suitable for such a credit hire arrangement.
- As she was stepping outside of her regulated insurance policy, she may not be able to refer any complaint she may have to this Service.

In short, I would have expected Mrs K to have had explained to her what the benefits and risks of using credit hire were, as well as explaining her rights under the insurance policy.

Atlanta hasn't given us a copy of the call recording for when Mrs K reported the claim, so I have to base my decision on what I think's most likely to have happened. I think it's clear from Mrs K's testimony that she didn't understand the agreement she was entering into. It's widely agreed that she was immediately referred to the AMC when she first called and I'm satisfied from what she's told us that she wasn't given the opportunity to discuss her claim with either Atlanta or the insurer before discussing the claim with the AMC.

As the investigator pointed out, Mrs K explained that she didn't have the third party's details. So, it was clear from the start that there was a strong likelihood that it would not be possible to locate who was responsible for the damage. This should have been made clear to Mrs K at the time, explaining that it was possible the AMC may not be able to assist her and what the implications of this were. And I don't think this was done.

So I now need to think whether Mrs K has lost out because of what went wrong and, if so, to what extent I think Atlanta is required to compensate her for her losses. But I should reiterate again, that I can only consider any upset or losses that Atlanta (or any actions carried out by a separate business acting on Atlanta behalf) have caused – i.e. losses that are a direct consequence of her not being given an informed choice.

Ultimately, Mrs K has not been able to pursue the third party because the AMC wasn't able to obtain the CCTV footage. Mrs K has provided the AMC's explanation for why this happened. Ultimately, I think Mrs K has lost out here because of the challenges in obtaining CCTV footage as opposed to her being referred to the AMC in the way she was. And I'm not persuaded the situation (regarding the CCTV) would have been any different whether she'd claimed through her insurance policy, or the claim being handled by the AMC. So I can't hold Atlanta responsible for this.

But I do think Mrs K could have had a better understanding of what had happened. And it's clear she was still confused about the situation when she referred her complaint to this Service. Had she been given clearer information at the start (about the risks of entering into such an arrangement with the AMC) I think it's *most* likely she would have claimed directly through her insurance policy. This has prevented her from having the opportunity to get her car repaired.

### **Putting things right**

The investigator recommended that Atlanta pays Mrs K £150 in compensation for the distress and inconvenience she suffered in not being given a clear and informed choice. I think that's fair.

I haven't seen anything to show that the AMC is looking to recover any costs from Mrs K. But Atlanta should indemnify her if the AMC doesn't subsequently pursue Mrs K for any outlay it incurred in the handling of her claim.

### **My final decision**

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Atlanta Insurance Intermediaries Limited to compensate Mrs K in line with my instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 7 November 2023.

Guy Mitchell  
**Ombudsman**