

The complaint

Mr H complains about One Call Insurance Services Limited referring him to an accident management company when he called to claim on his car insurance policy.

What happened

Mr H was involved in an accident in his car with a third party, so he called the claims number in his policy documents. The call was answered by another company who, as well as handling these calls, are also an accident management company (AMC). For ease of reading I'll refer to them as A.

Rather than claiming on his motor insurance policy, Mr H agreed to A carrying out the repairs to his car and claiming the money back from the third party's insurer. A also arranged a hire car for Mr H, which was also charged to the third party. As Mr H's car couldn't be repaired it was deemed what is known as a "total loss". Mr H wasn't happy with how A handled the claim for his car and complained. He said there was a difference in the market value the AMC gave for his car and what his GAP insurer valued it at. He said he had lost out on taxi fares he'd been told he could claim back as well as the cost of the paint protection he'd put on his car.

Unhappy with A's response, Mr H referred his complaint here. One of our investigators let Mr H know his complaint about A wasn't one we could consider as he'd been referred outside of his regulated motor insurance policy. Unhappy with this, Mr H complained to One Call about being referred to an AMC.

One Call explained that A operates as its "claims directory service" and as Mr H's claim was deemed non-fault it was dealt with by A. Because of this, One Call said it had no involvement in Mr H's claim and so didn't think it had done anything wrong. Unhappy with One Call's response, Mr H asked this service to look into his complaint.

Our Investigator reviewed the complaint and recommended it be upheld. He thought the policy terms and conditions weren't clear that when Mr H called the number in them, to report a claim, that he would be referred outside of his insurance policy. He also thought Mr H would have been able to claim for the additional losses he'd had through his motor insurance policy if he used it. So he asked One Call to cover any car hire charges Mr H was being pursued for, cover his claim for personal belongings that were in his car and pay him £150 for the distress and inconvenience of the poor referral.

One Call didn't accept our Investigator's outcome. It said Mr H wasn't being pursued for any car hire charges and as he hadn't used his car insurance policy it didn't think it mattered what it covered. One Call also said that A had an alternative dispute resolution service Mr H could use if he was unhappy with A. One Call also didn't agree it had referred Mr H to A and said A had taken the call in its own capacity.

I issued a provisional decision on this complaint on 18 August 2023 where I said:

"One Call has provided a copy of the script A would follow when it receives a call on the

claims line. I've reviewed this script and it says:

"We are [name] who deal with non-fault claims on behalf of your broker"

It goes on to say:

"will be more than happy to deal with your claim on a non-fault basis. This means you will not have to pay your excess and provided there are no issues with liability a hire car will be provided as all costs will be recovered from the at fault insurer"

I've also called the claims line in Mr H's policy terms and conditions, which is answered by A. When the call is answered an automated message is played in which A says:

"we handle claims on behalf of One Call Insurance and their insurance partners"

I've also noted the policy document in the definitions section refers Mr H to his insurance certificate to see who his motor insurer is and under the "Us, Our, We" section it says: "One Call Insurance Services Limited". I'm therefore satisfied that when Mr H called the number in his policy documents, he was calling One Call and that One Call has delegated the claims call handling to A.

So, when Mr H called One Call to report the damage to his car, he was transferred to A to handle the call on One Call's behalf. This means that A was acting as One Call's agent. So One Call is responsible for A's actions or omissions during this call when it discussed Mr H's claim options and referred him for credit hire and repair.

However, One Call's responsibility for A's actions is limited to when A were acting on One Call's behalf - and One Call is not directly responsible for any actions or omissions of A outside of this. In other words, A was acting in its own capacity when handling Mr H's claim – not on behalf of One Call. And I don't have the jurisdiction to consider the actions of the AMC.

So, to be clear, I am only considering what happened during the call between Mr H and A (acting on One Call's behalf) when he was referred for credit hire and repair, and whether A, as One Call's agent, met the required standards.

The relevant regulatory and other requirements

As Mr H's insurance broker, One Call was obliged to provide Mr H 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 H contacted One Call to tell it about his 'non-fault' claim for damage to his car, One Call ought to have provided him with clear information about his options, so he could decide how best to proceed with his claim.

I appreciate One Call appointed A to fulfil this task on its behalf, and I don't think there's anything wrong in appointing a third party to do this. But, in line with ICOBS 2.5.3G, a firm cannot delegate its responsibility under the regulatory system when relying on others – it retains regulatory responsibility for achieving the outcome required. This means One Call is ultimately still responsible for making sure its regulatory obligations are met by any third parties acting on its behalf.

Under Principle 6 (PRIN 2.1R) One Call was also required to pay due regard to the interests of Mr H as its customer and treat him fairly. And in line with the Customer's best interests rule under ICOBS 2.5.-1R, One Call was required to act honestly, fairly, and professionally in accordance with the best interests of its customer. And, if any recommendations were made, One Call was required to take reasonable care to ensure the suitability of its advice, in line with Principle 9 (PRIN2.1R).

If I find A didn't meet these regulatory requirements during the call when it referred Mr H for credit hire and repair then One Call would be held responsible.

The referral

One Call has said it's unable to provide the call Mr H had with A and has provided a call script of what would have been discussed. While I agree this script does explain Mr H could claim through his own insurance, I'm not satisfied it goes far enough to explain the differences to Mr H about how he can arrange for the repairs to his car so he can make an informed choice. I say this because it doesn't let Mr H know that by continuing with A that he's stepping outside of a regulated insurance contract, that he will need to enter a credit agreement for the repairs to his car and the hire car, that One Call or his insurer aren't responsible for the actions of A or that he could ultimately be held responsible for the credit hire charges and that any recourse he may have if things go wrong aren't the same as he gets through his regulated insurance contract.

As I'm satisfied the referral was not good enough, I've looked at the implications of the poor referral on Mr H. Our Investigator initially thought Mr H didn't need a replacement hire car, however Mr H has confirmed he did. As Mr H said he did need a replacement hire car, I think it's likely if A had explained everything as it should then Mr H would still have used A as he said he did need this car.

Mr H has explained how he feels One Call hasn't been clear and has tricked him into using an AMC, knowing that it wouldn't provide a good claims experience. I'm not convinced using an AMC means the claim experience wouldn't be a good one. However, there are differences to claiming on a motor insurance policy and One Call should have explained this to Mr H before referring him outside of his regulated insurance contract. As it didn't it's clearly caused Mr H unnecessary distress and inconvenience when he found out the differences between using an AMC and claiming on his policy. And as this happened after Mr H raised concerns about the AMC, I'm satisfied that by not explaining the difference beforehand has caused him distress and inconvenience. Therefore, One Call should compensate him for this by paying him £150 compensation.

I've also considered the other losses Mr H has raised. These relate to the paint protection applied to his car, the amount paid for the total loss value, and taxi's A said he would be able to claim back. While I understand Mr H's frustration with these, as they relate to the actions of A and I'm satisfied Mr H would most likely have used A. He would need to raise his concerns about these items with A. So, I'm not going to tell One Call to do anything else in relation to these."

One Call didn't respond to my provisional decision by the date requested. Mr H responded and didn't accept it. He disagreed he would have used the AMC as he said his car insurer or the third party insurer would have provided a car for him. He said he only agreed to use it as the process sounded simpler than claiming on his car insurance policy. Mr H said as One Call hadn't explained his options to him, then One Call should be responsible for the losses he's incurred by using the AMC. Mr H clarified that he wasn't disputing the market value the AMC gave for his car, just that A should have listened to what Mr H or his GAP insurer said

about the market value and come to an agreement on it. Mr H confirmed therefore that his losses were the paint protection which was on his car and the cost of taxi's he took before he was provided with a hire car through A.

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 considered Mr H's comments, but I'm not persuaded to depart from the findings in my provisional decision. I understand Mr H disputes he would have used the AMC. While it's impossible to know for sure, I have to decide what I think is more likely than not to have happened. In doing so, I have considered that his comments are made with the benefit of hindsight. And I remain of the view that Mr H would more likely than not have used the AMC. However, even, if I did agree Mr H wouldn't have used the AMC, I wouldn't be telling One Call to compensate for the losses Mr H has asked for. I'll explain why.

Mr H said he has lost out on £359 for the paint protection which was on his car. While I understand this is a loss Mr H will need to cover, paint protection is something which would need to be considered as part of the market value of his car. What I mean by this is his car insurance policy covers him up to the market value of his car and wouldn't cover the paint protection separately. Therefore, if he'd claimed on his own car insurance policy the paint protection would be taken into account when the insurer decided the car's market value. Therefore, the paint protection will likely have been considered by A when it decided on the car's market value.

For the taxi costs Mr H has said he's been unable to recover, these are what are known as "uninsured losses" and again not something covered by his car insurance policy. And while I understand Mr H said he only incurred them on the advice of A, as they relate to A's actions when acting in its own right, Mr H he would need to raise this with A separately. For these reasons, I'm also not satisfied it's fair and reasonable to tell One Call to cover them here.

I would like to reassure Mr H that I've carefully considered his concerns and points raised about how he was referred to A and how he feels One Call intentionally tricked him. However for the reasons explained above I'm not going to tell One Call to do anything else.

My final decision

For the reasons explained above, and in my provisional decision. My final decision is that I uphold this complaint, I require One Call Insurance Services Limited to pay Mr H £150 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 October 2023.

Alex Newman
Ombudsman