

The complaint

Mr R complains that AA Underwriting Insurance Company Limited (“AA”) mishandled a claim on his motor insurance policy.

What happened

The subject matter of the claim and the complaint is a premium-brand car, first registered in early 2014. Mr R acquired it in 2017 (according to the policy documents from January 2022).

For the year from early January 2022, Mr R insured the car on a comprehensive policy. AA was the insurance company that was responsible for dealing with any claim.

The policy documents said that Mr R had twenty years no-claims discount (“NCD”). That was “protected” so that it wouldn’t be affected by a single claim in the policy year.

Any claim for damage to the car (except to a windscreen) was subject to a policy excess of £200.00. However, a feature of the policy was an “Uninsured Driver Promise” that AA would not take the excess if an uninsured driver was the cause of the incident.

Unfortunately, in late May 2022, another vehicle hit the car. Mr R got its registration number. But its driver (and passenger) left the scene without giving contact details, remaining unidentified.

Mr R made a claim on the policy. AA said the car was a total loss. AA said its pre-accident value had been £12,500.00, which it later increased to £12,600.00.

In June 2022, Mr R complained to AA that it was under-valuing the car and unfairly deducting the excess. In July 2022, Mr R complained to AA that it had recorded a fault claim against him.

By a final response dated late July 2022, AA turned down the complaint about valuation.

By a final response dated early September 2022, AA turned down the complaint about the excess.

Mr R brought his complaint to us in late October 2022.

our investigator’s opinion

Our investigator didn’t recommend that the complaint should be upheld. He thought that AA had acted fairly and reasonably in these circumstances.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr R and to AA on 19 July 2023. I summarise my findings:

AA couldn't identify or pursue the third party or their insurer. So I couldn't say that AA acted unfairly by recording a fault claim against Mr R.

AA's valuation of £12,600.00 was within the range of the trade guide figures and higher than most of them. So I couldn't say it was unfair or unreasonable.

I didn't find it fair and reasonable for AA to rely on the condition of identification.

Subject to any further information from Mr R or from AA, my provisional decision was that I upheld this complaint in part. I intended to direct AA Underwriting Insurance Company Limited to pay Mr R:

1. £200.00 in reimbursement of the excess; and
2. simple interest on that amount at a yearly rate of 8% from 31 May 2022 to the date of its payment. If AA considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr R how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Mr R disagreed with the provisional decision. He says, in summary, that:

- Fault claim against him
- CCTV footage caught the accident.
- Police told him he wasn't at fault.
- AA ignored this vital evidence.
- The offending car was subject of a Statutory Off-Road Notification (SORN). It was not insured or legally allowed to be on the road.
- AA attributed fault to him without a thorough investigation.
- He has to declare the accident to future insurers. He is being unfairly financially penalised.
- Pre-market value
- AA's letter dated late July 2022 made reference to using only CAP and Glass's.
- Through a colleague, he obtained a trade valuation immediately after the incident.
- The £12,600 AA offered was nowhere near the actual amount required to replace his car with a similar model in a similar condition.
- Uninsured driver promise
- He doubts that AA got the police report.

AA disagreed with the provisional decision. It says, in summary, that:

- Someone can provide details and be uninsured.
- The decision here is to change its wording on its product which is a usual criterion across the industry.
- The resolution to the customer's issue lies with the "untraced drivers agreement" which is for hit and run accidents. The customer can easily claim through the Motor Insurer Bureau ("MIB") for the benefit of excess reimbursement and a non fault change to the Claims Underwriting Exchange ("CUE") database.

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.

Financial Ombudsman Service

We are bound by the Financial Services Markets Act and by the Financial Conduct Authority's dispute resolution rules. We deal with consumer complaints against regulated financial firms. We are independent of both, and we act impartially.

We take into account applicable law, regulation and good practice. Above all, we decide what's fair and reasonable based on evidence.

Recording a fault claim against Mr R

Where an insurer has made an outlay on a policyholder's claim, it's common practice for that insurer to record the claim as a "fault claim" against the policyholder unless and until the insurer has recovered its outlay in full, typically from a third party's insurer. So a "fault claim" doesn't necessarily mean the policyholder was responsible for causing the damage.

In response to the provisional decision, Mr R has reiterated that the other vehicle shouldn't have been on the road at all. CCTV and the police email showed that he wasn't responsible for the accident. I accept that.

I haven't seen a formal police report. But I don't doubt that it would say that Mr R wasn't responsible for the accident.

In response to the provisional decision, Mr R has said that AA didn't do a thorough investigation. But the policy terms included the following:

*"(b) The Insurer will be entitled to take over and conduct at the Insurer's expense in Your name or in the name of any other person insured by this Insurance Document:
(i) the negotiation defence or settlement of any claim;
(ii) legal proceedings to recover for the Insurer's own benefit any payments made under this insurance You or any other person covered by this insurance must give the Insurer all documentation, help and information they may need."*

That's a common term in motor policies. In my view, it meant that AA could decide whether it was worthwhile to pursue recovery of its outlay.

I'm satisfied that AA did a proportionate investigation of whether it could identify the third party driver or any third party insurer. Unfortunately it couldn't. So AA couldn't pursue anyone to recover its outlay. In line with common practice, I don't find it unfair that AA recorded a fault claim against Mr R.

I accept that any claim – particularly a fault claim – is likely to adversely affect the cost of motor insurance for Mr R for a few years from January 2023.

Pre-accident market value

AA's policy terms included the following definition:

*"Market Value
The cost of replacing the Insured Car with one of the same make, model, age,*

mileage, specification and condition at the date of accident or loss.”

The Financial Ombudsman Service expects an insurer to value a used vehicle with reference to the retail prices in certain trade guides. As they are based on extensive research of likely selling prices, we regard those guides as reliable evidence of market value.

We do not use – and we do not expect insurers to use - the guide that Mr R used (even though it bears the name of one of the trade guides that we do use).

Typically, each guide that we use provides a different figure so that there is a range of figures. We may disregard a figure that is out of line with the others. But otherwise, we often say that a figure within the range is a reasonable valuation.

I've noted the make, model, age, specification, recorded mileage and condition of the car before the accident. For a car like that, AA found retail valuations in the Glass's and CAP trade guides. Our investigator checked them and found retail valuations in the Cazana and Auto Trader trade guides. Together, they were as follows:

Cazana	£11,870.00
Glass's	£12,540.00
CAP	£12,595.00
Auto Trader	£13,946.00

If any of those figures is out of line with the others, it is the highest one. In any event, AA's valuation of £12,600.00 is within the range of these figures and higher than most of them. So I can't say it was unfair or unreasonable. And I don't find it fair and reasonable to direct AA to increase its valuation or to pay any more.

Uninsured driver promise

The policy terms included the following:

“Uninsured Driver Promise

If You make a claim following an accident, You will not lose your No Claim Discount or have to pay any Excess, provided that:

o The Insurer can establish that the accident is not Your fault and the driver of the other vehicle is identified and is not insured; and

o You give the Insurer the other vehicles make, model and valid registration number.

It will help us to confirm who is at fault if You can supply the names and addresses of any independent witnesses, if available. If possible, You should also supply the name and address of the person driving the other vehicle.

When You claim You may have to pay Your Excess and may also temporarily lose Your No Claim Discount.

If subsequently the Insurer is satisfied that the accident was not Your fault, they will repay Your Excess, reinstate Your No Claim Discount and refund any premium which may be due to You.

The Uninsured Driver Promise is applicable to comprehensive policyholders only.”

AA has placed emphasis on the wording in the first bullet point. I've added the underlining. I accept that the words I've underlined were a condition that the driver of the other vehicle was identified and was not insured.

However, the context includes the fact that it is a criminal offence to drive a vehicle on a road without third party insurance. So an uninsured driver is not likely to want to be identified.

So – in an “Uninsured Driver Promise” - I regard the condition of identification as an onerous or at least a significant term. Therefore I’ve thought about whether the underlined words were sufficiently clear in the policy documents.

The welcome letter included the following summary:

“Uninsured Driver Promise: no excess or no-claims discount penalty if you are hit by an uninsured driver and the accident is not your fault”

That didn’t highlight the condition of identification. And the Insurance Product Information Document didn’t mention the uninsured driver promise at all. So I’m not satisfied that the condition of identification was clear enough.

I accept that it’s possible that the third party driver had third party cover on a policy not recorded against the vehicle they were driving. However, I keep in mind that the driver didn’t exchange details. So I find it more likely than not that the driver (as well as the vehicle) was uninsured.

In my view, an uninsured driver who didn’t stop is unlikely to have credibility as a witness if, for example, they later dispute liability for the accident. If that driver had been identified, they were unlikely to give a credible version of events that Mr R had caused the accident. And I consider that AA had established that the accident wasn’t Mr R’s fault.

Also, an uninsured driver will often not have sufficient financial means to make it worthwhile for an insurer to seek to pursue them for recovery of its outlay.

So I don’t consider it likely that the lack of identification caused any prejudice to AA.

In response to the provisional decision, AA said that its term was industry-standard. However, I would’ve upheld the condition of identification if it had been made clearer.

In response to the provisional decision, AA said that Mr R had an alternative remedy through the MIB untraced drivers agreement. However, Mr R suffered property damage for which he had comprehensive insurance on which he claimed. So I don’t consider that MIB untraced drivers agreement will help him.

For all these reasons. I don’t find it fair and reasonable for AA to rely on the condition of identification.

Putting things right

Mr R didn’t lose his NCD because it was protected. But AA declined to waive the excess.

From what he’s said, Mr R was upset about the fault claim and the valuation (on which I haven’t upheld his complaints), but not particularly upset about AA’s response under the uninsured driver promise (on which I have upheld his complaint). So I don’t direct AA to pay him compensation for distress and inconvenience.

I find it fair enough to direct AA to pay Mr R £200.00 in reimbursement of the excess. As his claim dates from 31 May 2022, I will direct AA to add interest at our usual rate from that date to the date of its payment.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct AA Underwriting Insurance Company Limited to pay Mr R:

1. £200.00 in reimbursement of the excess; and
2. simple interest on that amount at a yearly rate of 8% from 31 May 2022 to the date of its payment. If AA considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr R how much it's taken off. It should also give him a certificate showing this 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 R to accept or reject my decision before 29 August 2023.

Christopher Gilbert

Ombudsman