

The complaint

Mr N complains about UK Insurance Limited trading as Privilege Insurance (Privilege), regarding a claim under his home insurance policy for the theft of a mobile phone.

Privilege uses agents to administer and provide services under the policy, as well as to deal with claims and complaints. Reference to Privilege in this decision includes those agents.

What happened

In July 2023 Mr N's son's mobile phone was stolen. Mr N contacted Privilege to tell them about the theft and make a claim. Privilege appointed a supplier (D) to handle the claim. Mr N was initially offered vouchers for a replacement, which was then changed to a cash settlement (£469.44) at his request.

Some three weeks later Mr N was contacted by Privilege, asking him to pay a £200 excess under the policy. Mr N rejected the request, saying Privilege had told him in an email the excess had been deducted from the cash settlement. Mr N provided Privilege with the email and a bank statement for his account, supporting his view.

Unhappy at being asked for the excess when he'd been told it had already been deducted, Mr N complained to Privilege. In their final response they acknowledged his complaint, offering £75 as a goodwill payment for misunderstanding. But they maintained the £200 excess was still outstanding, referring to the policy terms and conditions.

Unhappy at what had happened, Mr N complained to this Service. He'd spent a lot of time dealing with the issue, causing him distress and worry from Privilege's demands for the excess and that he might be subject to debt enforcement action. He understood an excess was due under the policy, but he'd been told it had been deducted from the cash settlement. He wanted Privilege to apologise and stop chasing him for the £200 excess. He also wanted compensation for the distress he'd suffered.

Our investigator concluded Privilege acknowledged they got things wrong and should have deducted the excess prior to settling the claim. He understood why Mr N thought - given the correspondence - the excess had already been deducted. However, this wasn't deducted because of an error by Privilege. But the excess was due whenever a claim was made, which Mr N accepted, and was still due despite the error. Privilege had offered a further £50 in addition to the £75 previously offered, as compensation for the distress and inconvenience of the excess being payable after the cash settlement was made. The investigator thought this fair. The investigator also thought Privilege should take account of Mr N not expecting to have to pay the excess, including discussion of a repayment plan if necessary.

Mr N disagreed with the investigator's conclusions and requested an ombudsman review the complaint. He rejected Privilege's revised offer of £125 compensation as it would still leave him out of pocket if he had to pay the £200 excess. The correspondence he'd received from Privilege indicated the £200 excess was deducted from the cash settlement, so he'd already paid it. And he'd accepted the cash settlement of £469.44 as a reasonable offer based on his understanding the excess of £200 had already been deducted - which indicated to him

the gross settlement was £669.44. Had he been told the cash settlement should have been £269.44, he wouldn't have accepted the offer. He didn't think the decision could be revisited. And it was Privilege's mistake (D as their supplier) in not deducting the excess from the cash settlement – not his. So, Privilege should seek to recover the £200 excess from D.

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.

My role here is to decide whether Privilege have acted fairly towards Mr N.

The key issue in Mr N's complaint is whether Privilege have acted fairly in seeking to recover the policy excess of £200 from Mr N's claim. Privilege say their agent made a mistake in not deducting the excess from the cash settlement paid to Mr N (as would normally have been the case). However, the excess is still due under the terms of the policy. Privilege acknowledge the mistake and have offered a total of £125 in compensation to Mr N.

Mr N says he was clearly told the excess would be deducted from the cash settlement, which he accepted on that basis. Any mistake wasn't his responsibility, so he shouldn't have to pay the £200 excess.

I've considered all the information and evidence in this case. Having done so, I've concluded that while Privilege (D) made a mistake in the excess not being deducted before the cash settlement was issued, it is still due under the terms and conditions of the policy. I've also concluded Privilege have acted fairly in offering Mr N a total of £125 compensation for the distress and inconvenience the episode has caused him.

I know this will be disappointing to Mr N, so I'll set out why I've come to these conclusions.

Mr N says he was told clearly in an email that the policy excess – which he accepts would be due under the policy terms and conditions – would be deducted from the cash settlement. In saying this, Mr N refers to the following extract of the email sent by Privilege to him following his lodging his claim:

"We've logged your claim. What happens next?..."

We've appointed our approved supplier [D] to handle this particular incident...

What else do you need to know?

Your excess is £200.00

We'll deduct this amount from any cash settlement we offer. If settlement isn't suitable, your excess will be collected before any work is carried out."

There's also an email from D a few days later confirming the cash settlement had been processed by his bank, which doesn't make any reference to the excess. And a screenshot showing the credit of £469.44 to Mr N's bank account.

Looking at these extracts, I can understand why Mr N thought the excess of £200 would have been deducted from the cash settlement made to his bank account.

I've then noted the policy wording relating to the excess, referred to in Privilege's final response:

“Your excess

You will have to pay any excesses shown in your schedule. This includes the specific excesses for:...

We will only take off one excess for each claim, unless there is an endorsement shown in your policy schedule to say otherwise.

If we have asked a supplier to deal with all or part of your claim, we may ask them to collect the excess from you.”

The Policy Schedule confirms the relevant excess is £200. Taken with the policy terms above, I think it's clear the £200 excess should be deducted from the claim (and any cash settlement made to settle the claim).

From the evidence available, it's clear that despite the email sent to Mr N, the excess wasn't deducted from the cash settlement issued. Both Mr N and Privilege accept this was a mistake on the part of Privilege – from Privilege's case notes it appears they mistakenly didn't ask D to collect the excess. So, the issue is whether Privilege can fairly apply the excess after the cash settlement was paid. In considering this point, I've taken account of the approach of this Service when considering complaints, which is not to punish businesses where they make a mistake – as is the case here. It's to decide whether a business has acted fairly and reasonably towards a consumer (Mr N).

It's also not disputed the excess should apply. So, while it should have been applied to the cash settlement (or taken directly through a payment from Mr D) the fact it wasn't doesn't change the fact it is properly due under the terms of the policy. So, I think it's reasonable for Privilege to seek to recover the excess.

But they've acknowledged their mistake and offered to pay £125 compensation to Mr D for the distress and inconvenience the episode has caused and to settle the complaint. I think this offer is fair in all the circumstances of the case.

I've also considered the other points made by Mr N when disagreeing with the investigator's view. He says he accepted the cash settlement of £469.44 as a reasonable offer based on his understanding the excess of £200 had already been deducted – which indicated to him the gross settlement was £669.44. Had he been told the cash settlement should have been £269.44, he wouldn't have accepted the offer.

I've considered this point, but if Mr D feels the cash settlement made (taking account of the excess I've concluded would apply) is unfair, it would be for him to raise a separate complaint to Privilege about the value of the settlement. And in the first instance for Privilege to respond to any such complaint. It isn't something within the scope of this decision.

My final decision

For the reasons set out above, it's my final decision to uphold Mr N's complaint. UK Insurance Limited trading as Privilege Insurance has already made an offer to pay £125 for distress and inconvenience to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that UK Insurance Limited trading as Privilege Insurance should pay £125.

UK Insurance Limited trading as Privilege Insurance must pay the compensation within 28 days of the date on which we tell them Mr N accepts my final decision. If they pay later than

this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 28 December 2023.

Paul King
Ombudsman