

The complaint

Mr B complains One Insurance Limited referred him to an accident management company ('AMC') for credit hire and repair when he called to claim on his car insurance policy.

Mr B is represented in this matter by his wife, Mrs B. However, for ease, I'll refer to Mr B throughout this decision.

What happened

In October 2022, Mr B was involved in an accident in his car with a third party, so he called their claims number. The call was answered by another company who, as well as handling these calls, are also an accident management company (AMC).

Rather than claiming on his insurance policy Mr B was referred to the AMC for it to carry out the repairs to his car and claim the money back from the third party's insurer. Mr B explained he's experienced poor service leading to issues including significant delays in receiving the settlement sum, early return of the hire car and poor communication.

The AMC also arranged a hire car for Mr B, which was also going to be charged to the third party. As Mr B's car couldn't be repaired it was deemed what is known as a 'total loss'. Mr B complained about how the AMC handled the claim and the significant and long lasting the impact its poor service has had on him and Mrs B.

Unhappy with the AMC's response, Mr B brought his complaint to this service for an independent review and a complaint was set up against OIL.

Our Investigator reviewed the complaint and recommended it be upheld, asking OIL to pay £300 as compensation for the distress caused and 8% interest on the settlement sum given it likely would've been settled much sooner than it was if the claim had been made within the insurance policy.

OIL didn't accept the Investigator's outcome. It said at the point of agreeing to the credit hire and repair, Mr B was made aware of the potential of the cost falling back on him. He was also given the full details of the agreement which he signed. So, if he was concerned, OIL considered Mr B had every opportunity to claim against his insurance policy instead.

As OIL didn't agree, the complaint was passed to me to decide. I issued a provisional decision as set out below on 15 November 2023.

'I'm currently intending to uphold Mr B's complaint and require OIL to put things right as set out below. I'll explain why.'

The responsibilities of OIL

Before I address the merits of this complaint, it's first important to set out the parties involved and OIL's responsibilities, to make clear what I can look at in this decision.

OIL has delegated the claims call handling to the AMC. So, when Mr B called OIL to report the damage to his car, he was transferred to the AMC to handle the call on OIL's behalf. This means the AMC was acting as OIL's agent for this portion of the call. And OIL is responsible for the AMC's actions or omissions during this call when they discussed Mr B's claim and referred him for credit hire and repair.

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

So, in relation to OIL and the AMC, I'm only considering what happened during the call between Mr B and the AMC (acting on OIL's behalf) when he was referred for credit hire and repair and whether the AMC, as OIL's agent, met the required standards for that referral.

The relevant regulatory and other requirements

As Mr B's insurer handling the claim, OIL was obliged to give Mr B information that was clear, fair and not misleading under Principle 7 of the FCA Handbook (PRIN 2.1R The Principles) and ICOBS 2.2.2.

In this case, it means when Mr B contacted OIL to tell them about his 'non-fault' claim, it needed to give him clear information about his options so he could decide how best to proceed with his claim. OIL was also required to do the following.

- Pay due regard to the interests of Mr B as their customer and treat him fairly (Principle 6 of the FCA Handbook (PRIN 2.1R)).*
- Act honestly, fairly, and professionally in accordance with the best interests of their customer (ICOBS 2.5.-1R).*
- Take reasonable care to ensure the suitability of their advice if any recommendations were made (Principle 9 of the FCA Handbook (PRIN2.1R)).*

OIL appointed the AMC to fulfil this task on its behalf. However, in line with ICOBS 2.5.3G, a firm cannot delegate its responsibility under the regulatory system when relying on others. This means it retains regulatory responsibility for achieving the outcome required. Therefore, OIL is ultimately still responsible for making sure its regulatory obligations are met by any third parties acting on its behalf.

If I find the AMC didn't meet the relevant regulatory requirements during the call when it referred Mr B for credit hire and repair, OIL would be held responsible.

The referral call

I've listened to the referral call and considered whether OIL met the relevant regulatory requirements. During the call, the call handler at the AMC says the following.

'So obviously with this being a non-fault accident where you've been hit from behind, we can take it on through our Accident Management Company. It's also just another company that's owned by us. But it just means that you don't have to pay your excess and provided there's no issues with liability you'll get a hire car with all cost to be recovered from at fault insurer...so it's just as opposed to going through your insurance where you pay your excess and it will be like a fault accident on your policy until proved otherwise, the accident management company is a business that's been brought in to eliminate that whole process. So you don't have to pay excess from the start because it's obviously a 100% a non-fault accident.'

Mr B asked about the pre-recorded message played when calling up to talk to the AMC which explained Mr B could ultimately be held responsible for the hire car charges. The call handler confirmed he'd only be responsible for those costs if it was deemed to be an at fault accident, but, in their situation, the call handler said there wouldn't be any liability as their car was hit from behind. Mr B is clear when discussing this with the AMC – the excess isn't substantial and, although a courtesy car is useful, he doesn't want to be in a situation where there's any risk of him being liable for charges and would rather use public transport instead of having this risk. Mr B explained he was cautious and talked about the negative reviews he'd seen of people who'd been held liable for the credit hire costs but was told this wouldn't be the case in his claim. The call handler reassured Mr B – unless you've given false information about the claim or if you don't sign forms in time - 'there's no reason why anything would fall back on you'.

While I agree the AMC explains Mr B could claim through the AMC, I'm not persuaded it presented the information about this in a clear, fair and not misleading way. This is for several reasons including the following.

- *It didn't go far enough to explain the differences to Mr B about the options available or ask which option he would like to choose.*
- *It said the policy excess wouldn't be due if Mr B used the AMC but it would if he claimed through his policy. This isn't the full position as he may have been able to claim his excess back from the third party's insurer as an uninsured loss, even if he claimed through his own insurance policy.*
- *The only drawback the call handler discussed about claiming the costs back directly from the third party's insurer – and this was only when asked about it - was where the consumer has given false information or doesn't sign and return something as quickly as they should. But recovering the costs from the third-party insurer isn't guaranteed even where Mr B isn't deemed to be at fault for the accident. And, if this was the position, Mr B could become liable for those credit hire costs which would likely be much higher than the policy excess.*
- *I can't say OIL established Mr B needed to follow the credit hire and repair option or it was suitable for him. Even if I accept Mr B had a need for a car and credit hire was one way to get one, it wasn't the only option as the costs of Mr B hiring a car directly could've been claimed back from the third party's insurer in a similar way to the excess or he could've used a courtesy car until the car was declared a total loss.*
- *It doesn't let Mr B know OIL isn't responsible for the actions of the AMC.*
- *OIL didn't explain a key downside to not claiming on his insurance policy and dealing with the AMC as a separate company meant Mr B was stepping outside of his regulated contract and dealing with an unregulated company. Practically, this means he doesn't have the same routes available if things go wrong with the AMC.*

Taking everything into account, I'm not persuaded OIL presented information about the options Mr B had in a clear, fair and not misleading way. Given the call handler highlighted the main benefits of credit hire, she ought also to have highlighted the key risks, to present Mr B with a balanced view of his options and allow him to make an informed choice how to proceed. Mr B says if this had happened, he would've chosen to use his insurance policy.

For the above reasons, I uphold Mr B's complaint. This is because I don't think he would've agreed to the referral to the AMC if he'd been given the clear, fair and not misleading information he should've about his options by OIL. If Mr B hadn't stepped outside his motor insurance contract, I think it more likely he would've avoided some of the distress and inconvenience he's been put through with the AMC. By way of an example, the referral to the AMC has led to significant delays, mistakes being made by the AMC and generally poor service below the standard Mr B could've reasonably expected from his insurance company.

So, but for the referral by OIL to the AMC - which I've already found fell below the required standard - it's my view Mr B would've avoided some of the distress and inconvenience he's experienced. Therefore, OIL should put right the impact of its referral by following the steps outlined below.

Whilst I recognise how strongly Mr B feels about the matter, it's important to explain that, as an informal dispute resolution service, our awards are designed to compensate consumers, not punish, or deter organisations. And we're not able to ask a business to change its processes or consider whether other consumers who haven't complained to our service have been impacted. That would be for the Financial Conduct Authority (FCA) as the regulator.

Whilst I can only consider the referral to the AMC in this complaint about OIL, Mr B can contact the AMC directly and follow its own complaints process if he thinks its actions caused him problems that still need to be addressed. And he may also refer his concerns about OIL to the FCA.

Finally, I note Mr B has expressed considerable concern about his potential liability for the credit hire costs and says the worry of this keeps him and Mrs B awake at night. I genuinely empathise with this situation. However, it's important to explain my role is to consider the poor referral and impact of this as it stands at the time of writing this decision. And, at the moment, Mr B isn't being chased for any credit hire fees nor is he able to find out if he will be from the AMC. Therefore, this isn't a known loss which I would make an award for at this point as I consider the loss is speculative and I don't have sufficient information about the loss and the circumstances surrounding Mr B's liability for the same.

If Mr B is pursued at a later date, and it relates to the same issue we've considered in this matter - the poor referral - I don't think it's likely something this service can (or will) consider. That said, I'm not able to determine our service's jurisdiction or decision on the merits of a future case when dealing with this matter. However, if the AMC seeks to recover credit hire costs from Mr B in the future and those costs arose due to something OIL did or failed to do which Mr B hasn't already complained about with OIL (and it doesn't relate to the poor referral), it may be possible for Mr B to raise a further complaint with OIL in the first instance.'

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.

Mr B responded to accept the decision. OIL hasn't responded. It follows my final decision reflects my provisional decision, as set out above, and I uphold Mr B's complaint in this matter. I set out below how OIL should put things right as a result.

Putting things right

To put things right, One Insurance Limited needs to pay to Mr B the following:

- £300 as compensation distress and inconvenience for the poor referral to the AMC itself and the distress and inconvenience suffered because of it; and
- 8% simple interest per annum on the claim settlement from one month after the date of loss until the date the total loss settlement was paid to Mr B. This is because I consider one month to have been a reasonable time in which OIL would've settled a total loss claim had Mr B not been referred to the AMC.

*If One Insurance Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr B how much it's taken off. It should also give Mr B a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

One Insurance Limited needs to take the steps outlined above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 December 2023.

Rebecca Ellis
Ombudsman