

The complaint

Mr S is complaining about the way a claim following an accident was handled after he contacted BISL Limited to claim on his car insurance policy.

What happened

In November 2022 Mr S contacted BISL to say his car had been damaged in an accident and he wanted to claim for the damage. BISL says it took details of what happened and considered him to not be at fault for the accident. So it said it advised him that he could either claim from his insurance policy – where he would have to pay an excess and would only get a courtesy car while the car is being repaired – or he could use a third party company who would handle the claim and provide him with a hire car. It says Mr S chose to use the third party.

However, Mr S later raised two separate complaints:

1. He said it took six days for him to be given a hire car and it took around two months before the repairs were authorised. He said the car stayed stationary for around four months before any repairs started.
2. When the car was returned to him there were further issues with it. He said he had to replace the whole hybrid system and he thinks this was because the car was sat stationary for around four months.

BISL acknowledged there were delays in Mr S receiving the hire car and in getting the claim authorised. It paid Mr S £190 in compensation for this (£150 for the delay in authorising the repairs and £40 for the delay in him receiving the hire car). But it said there wasn't anything to show that the issues Mr S was experiencing with the car were down to the accident or the way the car was repaired. So it asked him to get a report from a manufacturing dealership setting out whether the issues were accident related. Mr S then referred his complaint to this Service.

I issued a provisional decision partially upholding this complaint and I said the following:

"I should first set out that I acknowledge I've summarised Mr S's complaint in a lot less detail than he's presented it. Mr S has raised a number of reasons about why he's unhappy about what's happened regarding this matter. However, in this decision, I haven't commented on each and every point he's raised. Instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy about this, but it simply reflects the informal nature of this service. I assure Mr S, however, that I have read and considered everything he's provided."

I also need to make clear that, in this decision, I'm only considering BISL's liabilities towards Mr S. I'm aware that there have been a number of other business's involved in this incident – particularly the credit hire provider – who I shall refer to as IM. But, apart from where IM could reasonably be held to be agents of BISL, I'm not able to comment on anything it did or did not do."

It's important to set out that, when Mr S first looked to contact BISL following the accident, he was doing so with the intention to claim for the damage to his car through his insurance policy. However, following the call, BISL arranged for IM to take over the handling of the claim by entering Mr S into a "credit hire" agreement. 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.

IM is not a party to this complaint, so I can't comment on the way it has handled Mr S's claim. We also do not have jurisdiction over the provision of credit hire services, as these are not 'regulated activities' covered by our dispute resolution rules. As I said above, Mr S entered into a credit hire agreement. This is an entirely separate contract to his insurance policy. He didn't claim through his insurance policy, so BISL isn't liable for anything IM did or did not do as part of the credit hire arrangement – including providing the hire car and the way the car was repaired.

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 Mr S was given enough information to make an informed choice about whether he wanted to claim through his 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 BISL would have told Mr S the following:

- In entering into a credit hire agreement, he wasn't claiming through his insurance policy, but he had the option to do so. And he should have been given a clear choice about whether he wanted to claim through his insurance policy instead.*
- The credit hire provider was a separate business to the insurer.*
- He may be liable for any outlay – including hire charges – if they're unable to recover the costs from the third party.*
- As he was stepping outside of his regulated insurance policy, he may not be able to refer any complaint he may have to this Service.*

In short, I would have expected BISL to have explained to Mr S what the benefits and risks of using credit hire were, as well as explaining his rights under the insurance policy. In addition to this, I have expected BISL to consider whether Mr S had a need for credit hire. In particular, it should have considered whether Mr S needed to be provided with a like for like replacement car, taking into account what he was entitled to under his own policy.

BISL has given us a copy of the call recording for when Mr S reported the claim, which I've listened to. However, I'm not persuaded that BISL gave Mr S a clear choice. The call handler said he was going to refer the claim to IM and asked Mr S whether it was happy for him to do so. I don't think it's fair that Mr S was being asked to opt out of credit hire. However, I would have expected BISL to have simply asked Mr S whether he wanted to claim through his insurance policy or to use credit hire.

Further to this, I don't think BISL clearly set out the potential implications of using credit hire. The call handler said that there was a chance the third party's insurer may not settle the costs, but the call handler only said that Mr S would have to help recover the costs and didn't say that there was a risk he may become liable for these costs.

From listening to the call and considering Mr S's subsequent testimony it seems to me that he didn't understand the agreement he was entering into. And, on balance, I think he was of the genuine belief and understanding that it was his insurer, or at the very least the agent of his insurer, who was dealing with his claim.

I'm not persuaded that Mr S would have used the credit hire services had he been given an informed choice. I don't think he would have wanted to incur the risk of the hire charges and I'm conscious that he was entitled to a courtesy car while his car was being repaired. It's also clear that he wanted to ideally use his own garage which he only would have been able to do where he claimed on his insurance policy.

So I now need to think whether Mr S has lost out because of what went wrong and, if so, to what extent I think BISL is required to compensate him for his losses. But I should reiterate again, that I can only consider any upset or losses that BISL (or any actions carried out by a separate business acting on BISL behalf) have caused – i.e. losses that are a direct consequence of him not being given an informed choice. I cannot consider any losses that arise from the way IM has handled the claim unless they're a direct result of BISL's actions.

I don't think Mr S would have experienced all the early delays in having the repairs authorised had he gone through his insurer. It seems that there was initially a delay in deciding whether the car was a total loss or not. I think this is a standard assessment which I think the insurer would have carried out. But it took IM over two months to resolve this, which is longer than I think it would have taken Mr S's insurer. I think insurers will generally take up to one month to complete this investigation. So it seems that a one month delay arose here.

However, I'm also conscious that Mr S also had the benefit of a hire car during that time, which he would have had if he'd claimed through his insurance policy.

But I can't ignore that Mr S was unhappy with the length of time it took to authorise the repairs and I think this has caused some further distress and inconvenience. And I think this directly results from Mr S not being able to use his insurance policy. So I think BISL should compensate Mr S for this. The investigator thought BISL should pay Mr S a further £100 in compensation for this (on top of the original £190) and I think that's fair.

However, I don't think I can reasonably hold BISL responsible for any issues with the way the car was repaired. It's possible Mr S would have had the same issues had he claimed through his insurance policy. So I don't think I can reasonably say that the way the garage repaired the car (including any delays that arose as part of these repairs) is a direct result Mr S not being given an informed choice, nor is it a reasonably foreseeable loss arising from this.

I must make it clear that I'm not saying the issues Mr S has had with the vehicle isn't a result of the way the repairs were handled. But I don't think I can reasonably hold BISL liable for this. So I can't require it to refund what Mr S has paid for the additional repairs. Mr S will need to raise this with IM and/or the repairing garage directly if he wishes to pursue the matter against them."

BISL responded to accept my provisional decision. However, Mr S said he didn't agree and raised the following:

- He didn't know he'd entered into a credit hire arrangement and would have used his insurance policy if BISL had given him a choice. He said BISL forced using credit hire upon him.
- He said he had to talk to many different departments and make many calls because of this. He said he had to make more than 100 calls. Every time he called BISL it asked him to contact many different people. Whenever he called IM, he had to wait hours and they were sometimes rude.
- He said this affected his well being and he believes this is one of the main reasons he became mentally ill recently.

- He reiterated it took five months to get his car back. He said it was kept in the scrap yard for four months as it was expected to be demolished.
- He said the scrapyards demanded payment to take the car back to the repairer's place as they decided to repair the car after four months.
- He set out again that, when the car was returned to him, it broke down the next day because of the hybrid issue. He said he contacted the breakdown department who carried out a temporary repair. Since then he says he's sent many emails to BISL and IM about the fault.
- He said IM told him to not carry out any repairs because it might take the car back, but he says IM didn't come back to him. So he said he had to pay to fix the car himself. And he highlighted IM took the hire car months before that.
- He highlighted that the hire car he was given was a five seater car, but his car was an eight seater. So he said he had to cancel some contracts because of this.
- Ultimately he said BISL did not explain correctly about credit hire in the first instance and he said the poor handling affected his well-being, and he's become mentally ill as a result.

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 recognise Mr S feels strongly about what's happened and I naturally sympathise with the impact this matter has had on him. And I assure him I have read and considered everything he's said and provided in my provisional decision. But, I think almost everything Mr S has set out above relates to IM's handling of the claim. And, as I set out in my provisional decision, I can only consider BISL's actions in this decision – i.e. I cannot consider anything that IM has done, apart from where IM could reasonably be held to be agents of BISL.

Mr S's concerns ultimately stem from the way IM has handled the claim. But as I set out in my provisional decision, I can't reasonably hold BISL responsible for this. I'm not saying in any way Mr S isn't entitled to be aggrieved about what's happened, nor am I saying IM acted unreasonably. I'm simply saying I can't look at this.

As I explained in my provisional decision, I think BISL can reasonably be held liable for the delay in the repairs. But I don't think I can fairly say that the issues with the repairs naturally follow from the fact Mr S wasn't given an informed choice. And Mr S hasn't given me anything different to make me conclude what I said in my provisional decision.

I remain of the opinion that the compensation I awarded in my provisional decision was fair. I note Mr S's comment that the like for like car he received by IM wasn't of the same specification to his own car. And he says he lost out financially because of this. But he's not provided anything to support this and I'm conscious that he's not insured to drive the car for hire and reward. So I can't reasonably require BISL to pay further compensation for any alleged financial losses.

My final decision

For the reasons I've set out above, I partially uphold this complaint and require BISL Limited to pay a further £100 in compensation, on top of the £190 it's previously offered. It should pay this to Mr S directly if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 March 2024.

Guy Mitchell

Ombudsman