

## **The complaint**

Mr K is complaining that he's out of pocket after he contacted Broker Direct Plc to claim through his car insurance policy following a non-fault accident.

## **What happened**

In May 2023 Mr K was involved in a car accident with a third party and his car was damaged. So he contacted the telephone number in his car insurance documents – that was arranged by Broker Direct – to look to claim for the damage to his car. He also explained he was looking to get a courtesy car. Mr K was given a hire car by a third-party company – who I shall refer to as E. Mr K says he understood this car was provided under the terms of his insurance policy.

Mr K is unhappy because he says E told him he had to assist it with court proceedings to recover the hire charges from the third party. And he says E told him he'd have to provide his bank statements and proof of income. He also said he didn't think his car had been repaired properly, so he had to pay for further repairs. He didn't think this was fair, so he complained to both E and Broker Direct.

Broker Direct paid Mr K £100 in compensation for not clearly explaining E's role. Mr K didn't think this was fair compensation, so he referred his complaints to this Service.

In a separate complaint, another ombudsman issued a decision saying that this Service didn't have jurisdiction to consider E's actions in handling Mr K's claim as they said the type of agreement Mr K entered into with E wasn't a regulated agreement. However, the investigator explained we could consider the actions of Broker Direct. He said Broker Direct was a broker, but also administered the policy on behalf of the insurer. He said Broker Direct should have ensured that Mr K was given a choice as to whether he wanted to claim on his insurance policy or to use the credit hire facilities E provided.

Our investigator partially upheld this complaint. He explained that, after Mr K first called to report the incident, he was put through to E to be given a hire car. He said E then arranged to put him into an agreement known as credit hire – whereby E provided a hire car on credit. E then looks to recover this cost directly from the third party's insurer.

However the investigator explained that this arrangement is separate to the insurance policy, which meant this wasn't a cost the insurer incurred so couldn't recover this from the third party's insurer as part of the claim.

The investigator didn't think Mr K would have chosen to enter into the credit hire agreement had he been given a clear choice. And he thought Mr K had lost out as a result. He highlighted that Mr K was being threatened with having to pay for the costs of hire himself and had to provide information he wouldn't have had to provide, had he been given a courtesy car under the terms of the policy. So he thought Broker Direct should pay Mr K a further £200 in compensation (£300 in total) for the distress and inconvenience Mr K had suffered from not being given the choice to receive a courtesy car from his insurance policy.

The investigator also thought Broker Direct should agree to cover the hire charges incurred, on the condition that Mr K assisted E with pursuing the claim against the third party through the courts. But he said it didn't have to pay this if Mr K refused to assist E.

Broker Direct agreed to settle the complaint in line with the investigator's recommendations (although it thought £300 was higher than it considered to be fair). Mr K didn't agree he should have to assist E. He said he was willing to assist Broker Direct and the insurer as part of the claim. But he said he didn't trust E and wasn't willing to assist with that recovery. And he thinks Broker Direct should just pay these costs.

As an agreement couldn't be reached, the complaint's been passed to me to decide.

### **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 come to the same conclusion as the investigator for the same reasons. I'll now explain why.

I need to make clear that, in this decision, I'm only considering Broker Direct liabilities towards Mr K. I'm aware that there have been a number of other businesses involved in this incident – particularly E. But another ombudsman has already decided on a separate complaint that this Service can't consider E's actions. So, I'm not able to comment on anything E did or did not do.

It's important to set out that, when Mr K first looked to contact Broker Direct following the accident, he was doing so with the intention to claim for the damage to his car through his insurance policy. And I'm satisfied it's most likely that he was looking to obtain the courtesy car that his policy allowed him to have. However, following the call, Mr K entered into a "credit hire" agreement. This was an arrangement outside of the terms of the insurance policy and Mr K is ultimately liable for the cost of the car if the third party's insurer doesn't cover this cost.

The credit hire agreement Mr K entered into with E is an entirely separate contract to his insurance policy. Broker Direct isn't liable for anything E did or did not do as part of the credit hire arrangement – including its acts of recovering losses from the third party.

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 K 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 Mr K would have been told the following:

- In entering into a credit hire agreement, he wasn't receiving the hire car through his insurance policy, but he had the option to do so. And Broker Direct should have given Mr K a clear choice about whether he wanted to use the courtesy car cover from his insurance policy instead of a hire car under a credit facility.
- The credit hire provider was a separate business to the insurer.
- He may be liable for the hire charges if they're unable to recover the costs from the third party.
- As he was partly 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 Mr K to have had explained to him 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 would expect there to have been a consideration of whether Mr K had a need for credit hire. In particular, it should have considered whether Mr K needed to be provided with a like for like replacement car, taking into account what he was entitled to under his own policy.

Broker Direct hasn't given us a copy of the call recording for when Mr K reported the claim, so I have to base my decision on what I think's most likely to have happened. I think it's clear from Mr K's testimony 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 providing him with the hire car. I haven't seen anything to show that he was informed of all the potential pit falls of utilising a credit hire service or that he was given sufficient information to make a clear and informed choice.

I recognise Broker Direct says Mr K signed a number of documents, but I'm conscious he electronically signed this and I'm not persuaded a lay person would immediately and clearly understand the potential implications of entering into the credit hire agreement. And I still think Mr K would have fairly understood he was receiving a hire car from his insurer. Ultimately, the terms of his insurance policy entitled him to receive a courtesy car while his car was being repaired. And, while I recognise this wasn't like for like, I think it's most likely Mr K would have chosen this option rather than incur the potential risk of being liable for the hire charges.

So I now need to think whether Mr K has lost out because of what went wrong and, if so, to what extent I think Broker Direct is required to compensate him for his losses. But I should reiterate again, that I can only consider any upset or losses that Broker Direct has caused – i.e. losses that are a direct consequence of him not being given an informed choice.

In thinking about this, I need to consider three questions:

1. Are the losses a direct result of Broker Direct not giving Mr K an informed choice; if so
2. Is it reasonably foreseeable that Mr K would suffer losses such as these as a result of not being given an informed choice; and
3. Did Mr K take steps to mitigate his losses?

These three questions are critical in assessing a business's liability for consequential losses and form a fundamental basis in law. It's also a fair and reasonable consideration.

As I said, I'm satisfied Mr K would not have chosen to enter into a credit agreement had Broker Direct given him a clear choice. And, had he chosen not to enter into a credit agreement, clearly he would not be liable for the hire charges. Further to this, I think it's reasonably foreseeable that entering into a hire agreement instead of receiving a courtesy car through his policy could result in Mr K being liable for the charges. So I'm satisfied the answer is "yes" to the first two questions. And I don't think this is in dispute.

However, I cannot agree Mr K has taken steps to mitigate his losses. I recognise Mr K thinks it's wrong he has to assist E in recovering the money from the third party. I've noted and understood Mr K's comments in this regard. I can understand why he's unhappy he'll have to instigate a legal claim himself, as opposed to his insurer leading on this. And I appreciate this will cause Mr K some additional distress and inconvenience (which I shall address later), but assisting E in this recovery will significantly reduce the likelihood of him having to pay the hire charges. It's also a term of the credit hire agreement that Mr K signed and entered into. In refusing to assist E in this recovery, I cannot agree that he's taking steps to mitigate his losses.

So, while I agree that Mr K's potential liability does stem from E's failure to give him an informed choice, I can't reasonably require it to cover this loss unless Mr K takes steps to minimise the risk of this liability by assisting E from recovering this cost from the third party's insurer. However, if Mr K does fully assist E with recovery – including legal action – and at the end of the process he's still required to pay the hire charges, then Broker Direct should cover this.

I'm also conscious that Mr K has suffered some avoidable distress and inconvenience. Mr K has highlighted a number of additional costs and expenses he says he will incur from having to attend court. But I'm conscious that the third party has denied causing any damage, so I think it's likely Mr K was always going to have to assist in a legal claim against the third party's insurer whether he entered into the credit hire agreement or not. So I think Mr K would have had to incur these charges even if he hadn't entered into the credit hire agreement. But, as I said above, Mr K wouldn't have suffered the worry of potentially being liable for these charges. I also think the general fact he has had to raise a complaint about this has caused Mr K further inconvenience. Broker Direct has agreed to pay Mr K a further £200 in compensation (£300 in total) to reflect this. This is in line with what I would have awarded. So I think it's fair.

I note Mr K has also complained about the way his car was repaired. But his insurer arranged the repair. So I don't think Broker Direct is liable for this and Mr K will need to raise this aspect of his complaint with his insurer directly.

### **My final decision**

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Broker Direct Plc to do the following to put things right:

1. If Mr K fully assists E with recovery of its outlay – including any legal action – and at the end of the process he's still required to pay the hire charges, then Broker Direct should cover this.
2. Pay Mr K £300 in compensation (i.e. an additional £200) if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 5 July 2024.

Guy Mitchell

**Ombudsman**