

The complaint

Mr D complains about the way Zurich Insurance PLC has handled a claim under his motor insurance policy.

What happened

In July 2022, Mr D's vehicle was damaged, so he made a claim under his motor insurance policy. Zurich accepted the claim, and in August 2022 the vehicle was deemed a total loss.

Mr D was initially offered a replacement vehicle under his policy in December 2022, which he accepted. But Zurich later withdrew this offer as it had been informed the make, model, and specification of Mr D's vehicle was no longer being made and only a vehicle with a higher specification was available.

Zurich said Mr D was only covered for a like for like replacement otherwise it would be betterment. So it offered a cash settlement for the market value of the vehicle instead.

Mr D complains that, as an offer was made and accepted, Zurich has breached a legally binding contract by refusing to provide a replacement vehicle. He also complains about the delays and poor customer service he's received throughout his claim.

Zurich issued its final response to Mr D's complaint on 31 March 2023. It offered a settlement figure of £25,786, minus the policy excess, for the market value of the vehicle. In recognition of the delays, it offered £298.41 in lost interest. And for poor customer service, it offered £350 compensation.

Mr D remained unhappy, so he brought his complaint to our service. But our Investigator didn't uphold it. Whilst he acknowledged there'd been some failings in Zurich's claims handling, he was satisfied the inability to obtain a replacement vehicle was outside of Zurich's control and its offer of compensation was fair.

Mr D doesn't agree. He says the legal advice he's received with supporting citations is that the offer of a replacement vehicle superseded his original insurance contract. He reiterates the poor service he's received, and that Zurich has failed to respond to any correspondence since 31 March 2023 nor has it paid him the claims settlement or compensation offered.

The complaint has 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 recognise Mr D's strength of feeling regarding his complaint. I'd like to reassure him that whilst I'm aware I may have condensed what he's told us in far less detail and in my own words, I've read and considered all his submissions. I'm satisfied I've captured the essence of the complaint and I don't need to comment on every point individually, or possibly in the

level of detail he would like, in order to reach my decision. This isn't meant as a discourtesy, but it simply reflects the informal nature of our service.

The Financial Conduct Authority's (FCA) Insurance Conduct of Business Sourcebook (ICOBS) requires Acromas to handle claims promptly and fairly, provide information on the claims progress, and to not unreasonably reject a claim. I've kept this in mind when considering Mr D's complaint.

Replacement car

The terms and conditions of Mr D's motor insurance policy say:

New car replacement

Following a valid claim under Section 4 or 5 of the Policy we will, as long as everybody involved agrees, replace your car with a new one of the same make, model and specification provided your car is in current production and available in the United Kingdom, if:

- *you or your spouse bought it as new in the United Kingdom and are:*
 - *the first registered keeper; or*
 - *you or your spouse are the second registered keeper and your car has previously been pre registered in the name of the manufacturer or motor dealer and the mileage was less than 250 miles when you bought it. This cover does not extend to cars sold as ex demonstrators or nearly new.*
- *it costs more than 60% of the manufacturer's retail price, including VAT, to repair it; and*
- *it is less than one year old from the date of its first registration as new at the time of the loss. If we cannot replace your car with one of the same make, model and specification we will pay what you paid for your car, or the most recent new list price in the United Kingdom (whichever is less).*

When the vehicle was deemed a total loss, Zurich was satisfied Mr D met these policy conditions, so it offered a replacement vehicle. But it later became apparent that a vehicle of the same make, model and specification was no longer in production. As this is a requirement for the new car replacement (underlined above), Zurich said Mr D was no longer eligible to receive this policy benefit.

Having looked at the available evidence, I'm satisfied Zurich made the appropriate enquiries into a replacement and acted in line with the policy terms and conditions when a like for like vehicle couldn't be sourced. I appreciate Mr D's point that Zurich shouldn't have made the offer of a replacement vehicle until it knew whether this was a viable option. But our service isn't here to punish businesses when things go wrong, and I can't direct Zurich to provide something that doesn't exist.

Mr D says that, as an offer was made and accepted, Zurich has breached a legally binding contract. Only a court can determine whether that's the case. I've considered what Mr D says about this, but my role is to decide what's fair and reasonable in the circumstances of the complaint. Zurich can't provide the exact same model. I wouldn't expect it to go beyond what the policy says and leave a policyholder in a better position. So I don't think it would be fair to give Mr D a car with a higher specification.

The policy says Zurich should pay the market value of the vehicle at the time of loss which Zurich has offered to do.

Mr D hasn't complained about the amount offered to him for the market value. So our service hasn't considered whether the offer of £25,786, minus the policy excess, is fair. If Mr D wishes to accept this offer to settle his claim, he should contact Zurich directly. But if he's unhappy with the amount offered in this respect, he'll need to raise a complaint to Zurich in the first instance.

In addition, Zurich has offered £298.41 in lost interest on the market value of the vehicle representing the time Mr D was without this money due to Zurich's delays. This is in line with our service's approach where we'd award interest in situations such as these.

Customer service

It's not in dispute that Zurich failed to handle Mr D's claim promptly. It took eight months from the initial notification of loss until a final settlement for the market value was offered. In addition, there were failings in its customer service. Zurich acknowledge this and has offered £350 compensation to put things right. I need to decide whether that's fair, taking into account the impact this had on Mr D.

I can see that Mr D has continuously contacted Zurich in an attempt to get updates and progress his claim. And there have been times when his correspondence hasn't been answered. I've no doubt this would've caused Mr D unnecessary distress and inconvenience. But I'm not aware of any other impact as I understand Mr D was unable to drive during that time due to a medical issue.

Taking everything into account, I'm satisfied the offer of £350 compensation fairly reflects the impact the poor customer service would've had on Mr D.

Mr D complains that this money hasn't yet been paid to him. But as he didn't accept the offer, I'm not persuaded Zurich has done anything wrong by holding off making payment until the complaint has concluded.

And finally, Mr D complains that Zurich has failed to respond to any of his correspondence since it's email of 31 March 2023.

he hasn't received any response to his correspondence sent following Zurich's final response to his complaint dated 31 March 2023.

Under the rules that govern our service, I can only consider this complaint up until the date of the final response letter. If Mr D is unhappy with anything that's happened since, he'll need to raise a new complaint to Zurich in the first instance. However, he should be mindful that the email of the 31 March 2023 represented Zurich's final response to the complaint, and it explained that if Mr D remained unhappy, his next steps were to contact our service.

My final decision

Zurich Insurance PLC has already made an offer to pay £350 compensation to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Zurich Insurance PLC should pay £350.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 17 April 2024.

Sheryl Sibley

Ombudsman