

## **The complaint**

Mr C complains Acromas Insurance Company Limited (Acromas) will not take responsibility for damage caused to his car when it was recovered in Europe by an agent arranged through Acromas as part of the service provided under his roadside assistance insurance policy.

Acromas are the underwriters of this policy i.e. the insurer. Part of this complaint concerns the actions of the intermediary. As Acromas have accepted it is accountable for the actions of the intermediary, in my decision, any reference to Acromas includes the actions of the intermediary.

## **What happened**

In September 2023 Mr C's car broke down whilst he was in Europe. He had European breakdown cover that he had obtained through the car manufacturer.

He called the number for assistance in Europe detailed in his policy. This call went through to a central phone number in France. The agent at this call centre then passed the details on to the local motoring clubs in the country Mr C was in and asked them to find a recovery agent to assist Mr C. A recovery company was appointed to help Mr C, who I'll refer to as H. They towed his car to a storage location and then to a garage for it to be repaired. When the car was inspected at the garage, in addition to the mechanical issue that had caused the car to breakdown, further damage was found to have been caused, which it seems was due to it not being strapped correctly to the recovery vehicle.

Mr C asked Acromas to cover the cost of repairing the damage caused when his car was recovered, but Acromas refused to pay for this. It said that whilst it arranged for the recovery service to be provided by H, it was not approved by it and did not act as its agent. It said that this meant that according to the terms of Mr C's policy any damage caused by H was not Acromas's responsibility.

Because Mr C was not happy with Acromas, he brought a complaint to our service.

Our investigator upheld the complaint. They looked into the case and didn't think it was fair for Acromas to apply the abovementioned policy exclusion. She said, as Acromas had instructed the local recovery agent itself and the purpose of Mr C's policy is to provide roadside assistance, it was not fair for it to rely on a policy exclusion saying it was not liable for the actions of H as the recovery agent.

As Acromas is unhappy with our investigator's view the complaint has been brought to me for a final decision to be made. It's said that it hasn't been provided with a reason why the policy terms have been completely disregarded. It's added that if I uphold it and find Acromas is responsible for H's actions it will have serious implications. It's also asked if I uphold the complaint for me to issue a provisional decision prior to a final decision.

## 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.

Firstly I should say that I do agree with the investigator's view on this case. And – with this in mind – I see no reason to issue a provisional decision when Acromas has already have the opportunity to comment on the investigator's view and provide any further evidence it wishes to provide.

I should also say that we treat each case on its own merits, so it is not appropriate for me to comment on any wider implications my decision might have for Acromas.

When claiming under European cover, UK providers generally use contact centres with multi-lingual staff that are able to help UK consumers who breakdown abroad. It is very common for a local recovery agent in the country in question to be instructed by this contact centre either directly or through a local network. This is because providers in the UK do not have their own recovery fleets across Europe.

In the terms and conditions of Mr C's policy it says:

*"We may arrange assistance for you in accordance with the terms of \*the car manufacturer assistance and indemnify you for the costs involved subject to the terms and limitations of this policy. We do not actually provide the services (such as roadside assistance, vehicle repairs, hotels or hire cars). As a result, we are not liable for the acts and omissions of those who do, even if we pay for the relevant assistance in full or in part.*

*Only the service provider will have legal responsibility to you for the performance and quality of such services, including repairs at the roadside, towing to a local repairer or repairs at a local repairer. If you are dissatisfied with any work undertaken or the service provided, please contact the organisation that undertook the work or provided the service to you.*

*Service providers including garages, repairers, recovery operators, patrols of motoring organisations, car hire companies, hotels etc do not act as our agents."*

In this case Acromas said it clearly states in its policy terms and conditions that it **arranges** the service it does not **provide** it. And that it should not be held responsible for H's actions.

I agree with Acromas that a UK based roadside assistance provider shouldn't be held responsible for the conduct of the garages the recovery agent or customer decides the vehicle should go to, unless the provider insisted the car went to a certain garage or strongly recommended one to the customer. However, our normal approach is to hold an insurer who provides European roadside assistance responsible for the actions of the recovery agents it appoints or who are appointed through its contact centre or the contact centre it chooses to use to provide roadside assistance support. This is because roadside assistance is the core service provided by the policy and we think the customer should have the peace of mind of knowing that the recovery agents are properly checked by their roadside assistance provider or, if they are not, and in any event, the peace of mind of knowing that their provider is responsible for any damage the recovery agent causes to their vehicle during the recovery process. I appreciate Acromas has said it has had the abovementioned policy term checked by its legal team, but I don't think it can absolve itself of all responsibility for the recovery agent. And I am satisfied it produces a fair and reasonable outcome to apply our normal approach in this particular case and that Acromas should be held responsible for any damage caused to Mr C's car due to H's actions.

### **Putting things right**

Therefore, I've decided to uphold Mr C's complaint and require Acromas to consider the damage to Mr C's car caused in the recovery process by H, possibly due to it not being properly strapped to the recovery vehicle and cover the cost of having the damage repaired. If Mr C has already paid for the damage to be repaired Acromas should add interest to the amount due to him at 8% per annum simple to compensate him for being without these funds.

### **My final decision**

For the reasons I have given I uphold Mr C's complaint about Acromas Insurance Company Limited and order it to consider the damage to Mr C's car and settle the costs of the damage caused by H in the recovery process. It must also add interest to the amount due to Mr C at 8% per annum simple if he has paid for the damage to be repaired from the date Mr C paid this amount to the date of actual payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 September 2024.

Sally-Ann Harding  
**Ombudsman**