

The complaint

Ms N complains about One Insurance Limited's handling of a motor insurance claim.

What happened

Ms N held a motor insurance policy with One Insurance. She was involved in a collision with a third party and made a claim.

One Insurance agreed to cover the claim and offered to repair Ms N's car using one of its recommended repairers. Ms N preferred to use a different repairer. One Insurance offered a settlement which was equivalent to the amount it would have paid the recommended repairer.

Ms N was unhappy with this offer. She said the amount being offered was significantly less than she'd pay her preferred repairer. She said she wanted to use a manufacturer approved repairer because she also held a manufacturer's warranty for her car (which provided cover for bodywork and paint but didn't cover the damage which was being claimed here) but that required any repairs to be carried out by a manufacturer approved repairer. She said if she used the recommended repairer, the warranty would be invalidated.

When One Insurance rejected her complaint, Ms N referred her complaint to our service. She also told us she was unhappy One Insurance had recorded a fault claim against her, and One Insurance consented to us considering this as part of this complaint.

Our investigator thought One Insurance had acted fairly. He believed the terms and conditions were clear about how claims would be settled and the settlement offered by One Insurance was reasonable. He also thought One Insurance had reasonably recorded a fault claim.

Ms N didn't agree with our investigator. She believes the conditions of her policy about how claims will be settled restrict her freedom of choice and are unfair. She's asked for an ombudsman's 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.

There are two elements of Ms N's complaint that I need to consider, these being the liability decision and the settlement offer. I'll address these separately.

The liability decision

My role here isn't to decide who was at fault for the collision. That's a decision that should be left to a court to determine. I need to decide whether, in light of the evidence available, One Insurance acted reasonably when it recorded a fault claim against Ms N.

When it concluded Ms N was at fault for the collision, One Insurance relied on the Highway

Code which says that a vehicle already established on a road has right of way over a vehicle joining the road. Ms N doesn't seem to dispute that the third party was established on the road but that due to road and traffic conditions at the time, particularly that cars were coming from the other direction, there was no way the third party could have driven down the road without giving way to her. She also observed the third party had apologised after the collision, saying it was their fault.

One Insurance said that in the absence of independent evidence, such as CCTV footage or independent witnesses, it was unable to verify the traffic and road conditions. On the basis that Ms N was joining the road and the third party was established on the road, it felt it had no option but to accept liability and record a fault claim against Ms N.

I think that, in the absence of anything to support Ms N's position on the traffic conditions and that the third party had no option but to stop and give way, even if she hadn't been joining the road, One Insurance acted fairly when it concluded Ms N was at fault. The Highway Code is clear in saying the third party would have had right of way, as the fact they were established on the road wasn't disputed. I think the absence of anything to show the third party should have stopped or given way to Ms N meant it wasn't reasonable to expect One Insurance to dispute liability.

The settlement offer

Ms N's main issue, in her correspondence with One Insurance and with our investigator after he gave his opinion on the complaint, was that the amount offered in settlement of the claim was unfair.

The terms and conditions of Ms N's policy say:

We will not pay more than the amount our recommended repairer would have charged.

Our general position with these conditions, which are common in insurance policies, is that's it's usually fair for an insurer to limit its settlement to what it would pay its recommended repairers or contractors to carry out the repairs, provided it offers the policyholder the opportunity to use the recommended repairers. If it does so, but the policyholder chooses to use a different repairer then we'd usually agree an insurer only needed to make a settlement for the amount it would have paid the recommended repairer.

Ms N chose to use a non-network repairer, after One Insurance had offered to have the repairs carried out by the recommended repairer. Her preferred repairer's costs were more than £1,500 higher than the amount One Insurance would have paid the recommended repairer. Ms N doesn't dispute that One Insurance offered to have the repairs carried out by one of its recommended repairers, or that the relevant condition I've highlighted above is stated in her policy.

Ms N preferred to have the repairs carried out by a different repairer as they were a manufacturer approved repairer. The terms and conditions of the manufacturer's warranty she holds separately require any repairs to be carried out by a manufacturer approved repairer. One Insurance doesn't dispute that the proposed recommended repairer isn't a manufacturer approved repairer. Ms N makes a number of arguments about why it's unfair for One Insurance to limit its settlement and rely on the policy condition I've highlighted above. She's highlighted various pieces of legislation, regulatory guidance and principles and case law, including the Unfair Contract Terms Act and the Financial Conduct Authority's Principles and Consumer Duty.

While I may not address each of these points individually, I have considered all of them and

having done so, I think they can be summarised as Ms N believing the policy condition to be inherently unfair in that it limits her freedom of choice to use her preferred repairer and the condition creates a position where the harm of her warranty being invalidated is foreseeable.

I'm satisfied the relevant condition is clearly stated and suitably prominent within the policy terms and conditions. It isn't misleading, positioned unusually in the wording or worded in such a way as to reasonably cause confusion about how it would limit the settlement offered by One Insurance in the event of a claim. I don't think the condition is inherently unfair or unreasonable, or that it's unfair or unreasonable for One Insurance to rely on it when limiting claim settlements.

I think it's also important to consider the reason such conditions are included in insurance policies. By using recommended repairers, insurers are usually able to obtain preferential rates due to the volume of repairs which will be carried out. This reduces the cost of claims, and the cost of claims is one of the factors which affects premiums. An insurer's duties include ensuring that repairs are lasting and effective, and to handle claims promptly and efficiently.

I haven't seen any evidence that One Insurance's preference to use a recommended repairer here, or to limit the settlement to what the recommended repairer would charge, means they would be in breach of either of these obligations. Ms N hasn't, for example, provided evidence that the recommended repairer would be unable to carry out a proper repair, just that if she chose to have the repairs carried out it could invalidate a manufacturer warranty.

Ms N has also made reference in her submissions to our service to her belief that the amount the recommended repairer said it would be able to carry out the repairs was unrealistic as the cost to the repairer would be more than the amount they charged the insurer. Our service's role isn't to consider the relationship or contracts between the recommended repairers and insurers, or how they agree repair costs. What's relevant for this complaint is that the recommended repairer has stated what it would charge One Insurance for the repairs to Ms N's car. It was reasonable for One Insurance to use that cost as the basis for its settlement offer.

I've also thought about whether, by relying on the policy condition I've highlighted above, Ms N's freedom of choice to use her preferred repairer was restricted. I don't think it was. The policy condition doesn't prevent Ms N from using her preferred repairer, but simply limits the amount One Insurance will pay if she chooses to do so. The policy doesn't say she has to use a recommended repairer, or make any suggestion she can't use her preferred repairer.

Finally, I've considered the FCA's Consumer Duty and the cross cutting rule that financial businesses must avoid causing foreseeable harm to their customers that Ms N has particularly referred to. Her principal argument would seem to be that the product itself wasn't suitable as there was a foreseeable harm she could suffer in the event of making a claim – either by accepting a settlement for less than the repairs would cost or invalidating the manufacturer warranty.

I've considered whether I think One Insurance has breached the consumer duty by the inclusion of this condition in the policy. I don't think it has. I'm satisfied the terms and conditions of the policy are suitably clear and aren't unusual or unfair, for the reasons I've previously given. The terms and conditions don't breach or conflict with the standard manufacturer's warranty (which generally covers mechanical issues), as the warranty Ms N refers to is an additional product providing separate cover for bodywork and paint.

I don't think it's reasonable to expect an insurer, in this case One Insurance, to know how its

policies will interact and potentially conflict with every other policy which may provide some cover for the same car. As a general insurer of cars (as opposed to, for example, being an insurer whose policies are recommended by the manufacturer or their sales agents) I don't think it's fair that One Insurance should be expected to know that the way it settles claims could, hypothetically, mean that a separate manufacturer warranty would possibly be invalidated. The way it settles claims, as I've said previously, isn't unusual or overly restrictive.

My final decision

It's my final decision not to uphold Ms N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 21 November 2024.

Ben Williams
Ombudsman