

The complaint

Mr R complains about Accredited insurance (Europe) Ltd's (Accredited) decision to decline liability following a claim made against his commercial motor insurance policy.

Any references to Accredited include its agents.

What happened

In April 2022, Mr R was involved in an accident. He says the car in front of him stopped suddenly, causing him to break harshly. He was transporting goods on the roof of his van at the time. The load he was transporting slid forward and hit the car in front of him.

The third party made a claim against Mr R's policy. Mr R says Accredited assumed the load he was transporting must not have been secure and declined liability. Mr R says it was secure when he started his journey, saying the likely cause of it moving was the strap securing the load failing. Mr R says Accredited didn't ask to see the broken strap. Accredited said the policy terms required that loads were secure and had the load been properly secured, the accident wouldn't have happened. Accredited told Mr R that it wouldn't provide indemnity from any third-party claims.

Unhappy with this response, Mr R referred his complaint to this Service, saying Accredited hadn't fully investigated the circumstances of the accident before taking the decision to decline liability. It was considered by one of our investigators who said she didn't think Accredited had taken sufficient steps to determine the load wasn't secure in line with guidance on the Government website (which Accredited had referred Mr R to). She said Accredited should reassess the claim subject to the remaining policy terms and pay Mr R £200 to recognise the worry and inconvenience experienced.

Accredited didn't agree with the conclusions, so this case was passed to me. I issued a provisional decision on 24 September 2024. I've copied my findings below:

"As a starting point, it's helpful to set out the exclusion(s) Accredited are relying on to decline liability. The specific part of the policy says:

"17. General Exclusions

These general exclusions apply to all section of this policy.

We will not pay for any loss, damage, injury, death of any other liability whilst your vehicle is being used or driven: ...

17.1.8. a load or a number of passengers which is unsafe or illegal;

17.1.9. when carrying a load which is not secure;"

The intention of the policy is to ensure the policyholder properly secures a load they're transporting. Accredited says if the load had been properly secured it wouldn't have moved, despite the heavy and sudden braking. Mr R says he took steps to secure the load properly, but the ratchet strap he used to wrap around the load broke, which led to the movement of the load and subsequent damage to the third-party's car. Whilst there's no dispute the load

moved when the accident occurred this doesn't, in itself, mean it wasn't secure when Mr R started his journey, or up until the accident occurred.

In declining liability, Accredited is relying partly on the initial claim notification in which Mr R seems to have acknowledged the load wasn't secured properly. Though Mr R disputes this is how he registered the claim. Accredited say the load should have been secured laterally, whereas Mr R says there was a ridge on the front of the roof bar, which he relied on to prevent forward movement. Mr R says the policy doesn't define how a policyholder should secure a load, which Accredited acknowledges.

In the face of conflicting accounts of what happened, I need to decide which version of events I find more persuasive in the circumstances.

Mr R has consistently maintained he checked the straps on the load, and that he believed the ridge at the front of the roof racker would prevent any lateral movement. He says there is CCTV of him carrying out checks on the load before he departed. Mr R's account of the checks he carried out hasn't changed.

Accredited said the strap must have either been in poor condition, not secured correctly or not fit for purpose. But, apart from the load moving at the point of the accident, it hasn't offered any evidence to show Mr R was carrying a load which was not secure. And to show it therefore acted reasonably by relying on the above exclusion to decline liability. There's no dispute the load moved. However, I need to decide if I'm satisfied Mr R secured the load properly at the point he set off. If I accept Mr R secured the load properly, then I'm accepting the load was secure at the point of departure. This would mean the only reasonable explanation for the load moving would be that the strap holding it in place failed and the load moved because of this.

Given the consistent nature of Mr R's account of the checks he carried out, and the absence of evidence the load wasn't secure for the duration of the journey, I'm persuaded Mr R carried out sufficient checks to ensure the load was secure before starting his journey. I don't consider Accredited has proved the load was unsecure at the point of the accident, and this was the reason for the damage to the third-party car.

I consider it's more likely than not the strap securing the load broke, causing it to move under heavy breaking and the ridge at the front of the van was unable to prevent forward movement when the load became loose. In light of this, I think Accredited was wrong to turn down Mr R's claim and it should have provided him with indemnity in respect of his accident.

In August 2023, the third-party insurer decided to take steps to recover their costs. They issued court proceedings and Accredited sent Mr R an email on 30 August 2023. Attached to this email was the claim form sent by the third-party solicitors. In their email Accredited said Mr R needed to deal with this claim directly.

Mr R says he didn't receive any paperwork or correspondence in relation to the County Court Judgement (CCJ) until October 2023, when he received a further email from Accredited. I can't say whether or not the third-party solicitors tried to contact Mr R directly, but I am satisfied Accredited sent the email dated 30 August 2023 to the email address Mr R had used during his correspondence with them. I can't see any reason for him to have seen other emails but not this one.

That being said, I consider it very unlikely Mr R wouldn't have acted if he'd seen the email of 30 August 2023, given the serious content. What I can't be certain of though, is what would have happened if he had acted on it, and whether the CCJ would still have been handed down by the court.

As I've said, I intend to conclude Accredited ought to have provided Mr R with indemnity in relation to the third-party claim. And had it done so, it's unlikely the CCJ would have been handed down against Mr R. I intend to require Accredited to take the necessary steps to have the CCJ removed from any relevant records and cover any costs in doing this.

I can see this matter has been stressful for Mr R. He's talked about the impact this had on him since the liability was declined. He's been worried about the potential impact of this on him financially and he's experienced frustration with the overall handling of the claim, having to follow up on responses from Accredited.

I think, however, there was an opportunity for Mr R to appeal to the court before the CCJ was handed down had he seen the email sent by Accredited. Given the overall worry and frustration Mr R has experienced I'm intending to require Accredited to pay him £750 to put this right."

Mr R confirmed he'd received my provisional decision but didn't add any further comments.

Accredited said they accepted my position on indemnity but asked me to consider reducing the amount of compensation. They said it had been shown Mr R had misinformed me when he said he didn't receive the Court documents. They said I'd evidenced the court papers had been received and my conclusion Mr R didn't act due to non-receipt of this important paperwork didn't align with the facts.

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 think it's important to say here that I haven't made a finding Mr R received the court documents issued by the third-party's solicitor. I'm satisfied Accredited forwarded these to Mr R using the same email address they'd used before to correspond with him and he with them. But I don't see any reason to doubt Mr R's comments he didn't receive the email. And, as I said, given the serious content of the email, I think Mr R would have acted on it if he'd received it.

It's not clear why Mr R didn't receive this email. But I am satisfied Accredited sent it to him.

As I said in my provisional decision, I can't be sure what would have happened with the CCJ if Mr R had received the email. He may not have been able to stop it being handed down, but he might have.

In my provisional decision I set out why I'd concluded Accredited ought to have provided Mr R with indemnity in relation to the third-party claim. Had it done so, it's unlikely the CCJ would have been handed down against Mr R in any event. So, I don't agree with Accredited's suggestion I ought to reduce the compensation I'm requiring it to pay Mr R. Had Accredited not sent the email to Mr R, I would be requiring it to pay a significantly higher amount of compensation because I consider the CCJ would more likely not have been a factor had Accredited provided indemnity following the accident. But I think £750 fairly reflects the distress and inconvenience Mr R experienced, whilst recognising there *may* have been a possibility he could have taken steps to prevent the CCJ being handed down.

However, I consider Mr R has experienced significant distress and inconvenience as a result of Accredited's handling of this matter and I'm satisfied the compensation amount of £750 is fair and reasonable in the circumstances of this complaint.

My final decision

My final decision is that I uphold this complaint and require Accredited Insurance (Europe) Ltd to:

- Pay Mr R £750 compensation for the distress and inconvenience experienced.
- Take any necessary steps to have the CCJ removed from Mr R's records and cover any costs in doing this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 20 November 2024.

Emma Hawkins

Ombudsman