

The complaint

Mrs H and Mr H complain about One Insurance Limited (One) declining to provide them with a hire car after their vehicle was involved in a collision with a vehicle from outside the UK.

References to One include their agents who administer the policy and assess claims.

This decision covers Mrs H and Mr H's complaint to this Service about One, as the insurers of a Basic Legal and Hire Vehicle policy. This was an additional cover to the main motor insurance policy, provided by a separate insurer.

Mrs H and Mr H made a separate complaint to this Service about the settlement value for their vehicle by the insurer of the main motor insurance policy. That complaint was dealt with separately and doesn't form part of this decision. Another complaint was also made against the insurance intermediary/broker, which was also considered separately and doesn't form part of this decision. Because there are two other complaints, this decision doesn't duplicate the issues and outcomes they cover.

What happened

In December 2023 Mrs H and Mr H were involved in an accident, in which their vehicle was in collision with a third party vehicle. The vehicle, from outside the UK, pulled out of a side road and hit Mrs H and Mr H's vehicle as it was travelling on a main road (Mr H was driving the vehicle at the time, as a named driver). A witness provided a statement to support this version of events. Mrs H and Mr H contacted One to report the accident and make a claim.

Mrs H and Mr H say One referred the claim to the motor insurance policy underwriters (K) as the third party vehicle was from outside the UK. Mrs H and Mr H say K told them it was a 'non fault' claim – but that they later claimed it was a 'fault' claim. One refused to provide a hire car to Mrs H and Mr H under the Basic Legal and Hire Car policy, saying it was the responsibility of K and a separate claims management company (OCC). Mrs H and Mr H say OCC told them it was a 'non fault' claim. They were also told by One claims were treated as 'fault' claims until settled. Mrs H and Mr H also said K confirmed they were treating the accident as a 'non fault' claim, but One refused to update their details to reflect this.

Unhappy at One declining to provide a hire car, Mrs H and Mr H complained to One in December 2023.

In a final response issued by OCC to a separate complaint made by Mrs H and Mr H not handling their claim as an accident management company. One said that as the claim couldn't be guaranteed to be dealt with as a 'non fault' claim, then the policy wording meant cover wouldn't be provided and a hire car wouldn't be provided. One said Mrs H and Mr H would need to seek a hire car through their motor insurance policy (K were the insurer).

Mrs H and Mr H then complained to this Service. They were unhappy at being without a hire car from the date of the accident, meaning they had to take public transport to get to work and make other journeys, or borrow a vehicle from family members, adding mileage to their vehicles. One hadn't responded to any of their correspondence and provided conflicting

information, saying the accident was a fault claim and not their responsibility to provide a hire car – even though this was provided for under the policy terms. They'd had to spend significant time pursuing matters with One. The experience had been very upsetting and stressful over a prolonged period. They wanted One to acknowledge they'd received correspondence and the failings in their service, including contradictory statements. They also wanted significant compensation for not providing a hire car and the stress and frustration they'd suffered.

Our investigator didn't uphold the complaint, concluding One didn't need to take any action. The investigator considered the Basic Legal and Hire Vehicle policy as an additional cover to the main motor insurance policy. One said the provision of cover under the policy was that the prospect of recovering costs arising from a claim were clear from the outset. The terms 'non fault' and 'fault' weren't specific to the party that caused the accident leading to a claim, rather it revolved around whether the insurer (K) was able to recover all its outlays under a claim (common practice in the insurance industry when assessing liability under a claim).

When Mr H and Mr H made a claim with the insurer of the main motor insurance policy, the claim remained open as the outlays from the claim hadn't been recovered from the insurer of the third party vehicle involved in the accident. Where a claim remained open, it was considered a fault claim until such time as the outlays were recovered. One said the claim didn't meet its terms where a claim was deemed fault or liability was in dispute. And generally, the prospects of recovering outlays where a third party vehicle was from outside the UK are limited. So, the investigator concluded One had fairly applied the policy terms and conditions in declining to offer a hire car.

Mrs H and Mr H disagreed with the investigator's conclusions and asked that an ombudsman review the complaint. They said insurance policies should be clear and easy for consumers to understand, which they didn't think was the case with One's policy. The term 'non fault' wasn't covered or explained anywhere in the policy, so it would be reasonable for a consumer to interpret the term as would be set out in a dictionary. The term should have been included under the 'Definitions' section of the policy, which it wasn't. The policy made no reference to the likelihood of recovering losses. If that was the intention it should have been clearly stated (they provided a reference in the policy document).

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.

My role here is to decide whether One have acted fairly towards Mrs H and Mr H.

While Mrs H and Mr H's complaint contains several elements, the principal one is their not being provided with a hire car by One, under the terms of the Basic Legal and Hire Car policy. They say the accident wasn't their fault and they were given conflicting information about it being treated as a fault or non-fault claim. They also say the policy is unclear and doesn't define the terms 'fault' and 'non-fault'. One said that as the claim couldn't be guaranteed to be dealt with as a 'non fault' claim, then the policy wording meant cover wouldn't operate and a hire car wouldn't be provided.

In considering the complaint it's worth noting the earlier reference to the involvement of other parties, in particular the insurer (the underwriter) of the main motor insurance policy (K) and the accident management company (OCC). Reference is made to both in this decision to provide a fuller picture and understanding of what happened, but the complaint isn't about them, it's about One as the insurer of the Basic Legal and Hire Car policy.

Given the importance of whether there was a 'fault' or 'non-fault' claim arising from the accident, together with the points raised by Mrs H and Mr H in their response to our investigator's view, I've first looked at the terms of the policy. These are set in various documents provided as part of the complaint.

The Insurance Product Information Document (IPID) for the Basic Legal and Hire Vehicle policy states the following under the heading *What is covered?*:

- ✓ *A hire vehicle in the event of a non-fault claim will be provided for the duration of the claim or until a settlement is received, whichever is sooner, provided your vehicle is not driveable.*

The IPID also states, under a heading *What is not insured? (Key exclusions only)*:

- ✗ *Fault or dispute in liability claims*

The welcome letter issued when Mrs H and Mr H took out their motor insurance policy, which included the Basic Hire and Legal Cover element (as a policy enhancement) also includes the following statement under a heading *Policy enhancements* and sub-heading *Hire vehicle*:

"If you are involved in an accident that isn't your fault, then you'll be provided with a replacement vehicle for up to 14 days free of charge. However, we do also have a number of upgraded options available that will ensure you receive a hire vehicle regardless of whose fault an accident is."

The Policy Booklet includes similar terms, as follows:

"Basic Hire Vehicle Cover

If you have a non-fault claim incident, a hire vehicle will be given for the duration of the claim or until a settlement is received, whichever is sooner, if your vehicle is not roadworthy or drivable."

"Exclusions

1 No vehicle is available for fault accidents."

I've then considered whether the claim made following the accident should be considered fault or non-fault. Mrs H and Mr H have provided evidence and information that indicates the claim was being pursued (by K) as a non-fault claim. Other information indicates a different designation, that it was a fault claim. I've seen an email from One in May 2024, just before Mrs H and Mr H complained to this Service, that stated K are recording the claim as 'outstanding fault'. There's also a letter to Mrs H and Mr H dated April 2024 from a claims handling agency saying they are acting on behalf of K in pursuing the claim on a non-fault basis and are seeking (through their overseas representatives) to recover the claim outlays from the insurers of the overseas third party vehicle. But that the file remains open while they seek to recover their losses.

What this indicates is that the claim has not been settled and therefore liability for the accident hasn't been determined. Nor have the claim outlays (from K) been recovered.

At this point, I've also considered that standard insurance industry practice is that a claim is considered to be a fault claim unless (or until) an insurer is able to recover all of its outlays

on a claim. Only if (or when) an insurer recovers their outlays would a claim be closed as a non-fault claim.

This principle is not the same thing as which party is to 'blame' for an accident. In this case, I appreciate Mrs H and Mr H strongly believe the circumstances of the accident mean they weren't responsible, or to blame (or were at fault) for the accident with the overseas vehicle. However, as I've said, this isn't the same as whether, for insurance purposes, a claim is deemed to be 'fault' or 'non-fault'.

In this case, while K may be pursuing the claim as 'non-fault' if they aren't able to recover their outlays from the overseas third party insurer, the claim will be recorded as a fault claim.

One also make a point that claims involving an overseas vehicle and/or insurer typically mean greater difficulty securing admission of liability for an accident and consequently recovering any or all outlays on a claim. Which mean they are handled by the main motor insurance policy insurer (not a claims management company). This also means claims of this type would be recorded as 'outstanding fault' – which is the case here as set out above. So, a hire vehicle wouldn't be provided as the claim wouldn't be 'non fault'.

That being the case, then the policy wording set out above would mean a hire car wouldn't be provided under the terms of the policy. Mrs H and Mr H say the terms 'fault' and 'non-fault' aren't explained or defined in the policy and I agree they aren't specifically set out. But they are more generally understood to mean what I've set out above as standard insurance industry practice. And I've also seen evidence this was explained to them in some of their exchanges with One at the time of the accident and subsequently.

Taking all these points together, I can't conclude One acted unfairly or unreasonably in declining to provide a hire car under the policy.

My final decision

For the reasons set out above, it's my final decision not to uphold Mrs H and Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 21 February 2025.

Paul King
Ombudsman