

The complaint

Mr C complains about how Alwyn Insurance Company Limited (Alwyn).dealt with a claim under his motor insurance policy, following an accident.

References to Alwyn in this decision include their agents.
Your text here

What happened

In August 2023 Mr C was involved in a collision with a bus on a roundabout. He exchanged details with the bus driver and contacted Alwyn to tell them about the accident. The damage to Mr C's vehicle was cosmetic, so he didn't take up Alwyn's offer to have the vehicle repaired by an approved repairers. Mr C sent Alwyn a completed accident report form, including a sketch of the incident and photographs of both vehicles showing the damage. After being told they would need to await details from the third party insurer, Alwyn said they would close the claim if they didn't hear back from the other party within six months.

Mr C chased Alwyn for updates with the claim, including whether Alwyn had sought CCTV that may have captured the accident. Alwyn said there were no cameras in the area that would have captured the incident. After further follow ups with Alwyn, they told Mr C the third party were dropping their claim. But neither were they accepting any liability for the accident.

Mr C subsequently changed insurers and was contacted by his new insurers to say he had provided incorrect information when he took out his policy, meaning he would have to pay an additional premium of £200. This was due to information Alwyn had put on the Claims Underwriting Exchange (CUE) stating he was at fault for the accident and hit a third party.

Unhappy at how Alwyn had handled his claim and their recording of a fault claim on the CUE, Mr C complained.

In their final response Alwyn didn't uphold the complaint. They said the third party disputed liability for the accident and were making enquiries. Alwyn chased them several times, before the third party responded to say they wouldn't be bringing a claim but denied liability and wouldn't be making any payments. Alwyn said Mr C said he didn't want to make a claim for the damage to his vehicle. At that point, Alwyn said they provided Mr C with three options: him to withdraw from the claim and Alwyn would close their file; or Mr C instruct his own representative to pursue a claim on his behalf; or Mr A make a claim under his policy, with Alwyn arranging repairs to his vehicle and then looking to pursue a claim for the costs from the third party insurers. This would affect Mr C's No Claims Discount (NCD) until such time as recovery of costs was made from the third party insurers. As Alwyn hadn't received a response from Mr C to the time of their final response, they assumed he didn't want to bring a claim so they would close their file.

Mr C then complained to this Service. He was unhappy at Alwyn wrongly sharing information by recording a claim on the CUE, stating he'd been involved in an unresolved accident and that he was at fault. This caused his insurance premium to increase significantly. His vehicle remained damaged, which would either be costly to repair or significantly reduce its value

should he sell it. Alwyn had continually ignored his emails and other contacts. They also hadn't sought information from the third party or retrieved CCTV footage. Their sharing of information was also contrary to data protection (GDPR) legislation. He wanted removal of the information recorded on the CUE, payment in full for repairs to his vehicle (without deduction of excess) and a courtesy car for the duration of the repairs, reimbursement of the increase in his insurance premium and compensation for the stress and disruption suffered.

Our investigator didn't uphold the complaint, concluding Alwyn didn't need to take any action. The terms of the policy meant they had the ability to investigate and settle claims as they saw fit. Mr C hadn't clearly told Alwyn he wanted to claim through his policy, which he would have to do before Alwyn could then seek to recover the costs of any such claim from the third party insurer. While the investigator understood why Mr C didn't want to make a claim until the third party insurer had admitted liability, it wouldn't be reasonable to ask Alwyn to further investigate matters until Mr C gave a clear answer, nor for Alwyn to pay for repairs to his vehicle (and not charge the policy excess).

On Mr C's request for a courtesy car, that would only be provided if he made a claim through his policy for repairs to his vehicle (and would, under the policy terms be a small hatchback). Mr C was also concerned at the lack of response from Alwyn, but the claim notes also indicated unanswered calls from Alwyn, and he hadn't responded to the three options.

Mr C disagreed with the investigator's view and asked that an ombudsman consider the complaint.

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 Alwyn have acted fairly towards Mr C.

There are several main issues in Mr C's complaint, within the overall handling of the incident and claim by Alwyn, including their communication with him. These also include Alwyn's recording of the incident on the CUE (which Mr C says breaches data protection legislation) and the consequent impact on his premium with his new insurer. Mr C also wants Alwyn to pay for repairs to his vehicle (without deduction of the policy excess) and to be provided with a courtesy car equivalent to his vehicle while repairs are carried out.

On the first issue, I recognise the strength of what Mr C has told us (and Alwyn) about the circumstances of the accident and that he wasn't at fault for the accident. I don't doubt the strength of Mr C's feeling on this issue. But it's not for this Service to determine liability for an accident and whether a claim should be deemed a fault claim (or a non-fault claim). It's to decide whether Alwyn acted fairly in the circumstances of – and following - the incident.

The policy terms, as they do in motor insurance policies more generally, provide for Alwyn to assess claims and determine liability. Under a heading *Claims procedure* in the *General Conditions* section of the policy it states:

- *"We are entitled to conduct all matters relating to your claim on your behalf."*

Looking at the evidence available about Alwyn's handling of the incident, it does indicate their following up with the third party [insurer] on the issue of liability, initially holding them 100% liable based on Mr C's version of what happened with the accident, and then again when Mr C provided an accident report form. Alwyn advised Mr C of this (September 2023) and that should no response or evidence be provided by the third party, they would close

their file after six months. They also nominated solicitors to receive any notice of proceedings should the third party issue such a notice. For their part, Alwyn couldn't look to issue any proceedings as without Mr C making a claim, there would be no losses to seek recovery through proceedings. This is what I would expect them to do in the circumstances.

There's evidence the third party insurer disputing liability and in turning chasing the third party about whether they wanted to bring a claim. The initial indications were that they did, before subsequently confirming to Alwyn that they didn't (at the end of October 2023). In those circumstances the issue for Alwyn would be whether Mr C wanted to make a claim under his policy (for the damage to his vehicle).

Mr C was reluctant to have his vehicle repaired through one of Alwyn's approved repairers until the third party admitted liability for the accident. While I understand why he thinks this, where the third party (their insurer) doesn't accept liability, then it's for Alwyn to decide how to proceed per the policy term set out earlier. If Mr C didn't want to make a claim until the third party accepted liability then where liability wasn't admitted – as in this case – it was reasonable for Alwyn to set out (as they said in their final response) the three options available to Mr C, who's confirmed he didn't respond to Alwyn.

He could have opted to make a claim, have his vehicle repaired, and Alwyn seek to recover the costs from the third party insurer. But without Mr C making a claim, Alwyn wouldn't have incurred any claim costs and therefore wouldn't have any outlays to seek to recover. Mr C was advised of this when he first contacted Alwyn to tell them about the accident.

It's also not unreasonable for Alwyn not to keep a claim open indefinitely, particularly where the third party indicated – as they have in this case – that they weren't going to bring a claim of their own.

On the issue of Alwyn recording the incident on the CUE, I've seen details of the entry, which includes the date of the accident in August 2023. The incident is recorded as "*Closed Notification only*". Which accurately reflects the position, that Alwyn have closed their file (the entry records a 'closed date of October 2024) and that no claim for damage – either from Mr C or from the third party – has occurred (hence the designation as 'notification only'). While a claim hasn't been made by either Mr C or by the third party, the entry correctly reflects the fact that the incident took place. There is no reference to the claim being a fault claim.

The policy also provides for Alwyn to collect and process personal information when providing insurance cover. Under a heading *Data protection* it refers to a separate privacy policy and that Alwyn will share personal information with select third parties, including their insurance intermediary. While the CUE isn't specifically mentioned or included, it's standard practice for insurers to record information about claims on the CUE, so other insurers can access it and establish, or confirm, the claims history of a consumer. For example, as part of their validation of a new policy taken out by a consumer, including the information provided by the consumer. This is fair and reasonable, and Alwyn have followed standard insurance industry practice in this regard.

In the absence of Mr C saying he wants to make a claim, then I've concluded it was reasonable for Alwyn to close the claim (as notification only) and record the incident as they did on the CUE.

Mr C also wants Alwyn to pay for the increase in his insurance premium, because of their recording a claim on CUE. However, as I've concluded Alwyn have acted fairly in their recording of the incident on the CUE, then I can't hold them responsible for the actions of Mr C's new insurer in using this information when setting the premium for Mr C's policy with them. That is a commercial decision for them, reflecting their assessment of the risk

presented by Mr C, including his claims history – but also the other information he would have provided about his circumstances when taking out the policy. And my role here is to decide whether Alwyn have acted fairly and reasonably towards Mr C – not his new insurer.

On the issue of a courtesy car, the policy provides for a courtesy car to be supplied where a policyholder's vehicle is being repaired at an approved repairer. The Insurance Product Information Document (IPID) which summarises the more important features of the policy includes the following statement under a heading *"Are there any restrictions on cover?"*:

- ***"Courtesy car: we will only supply a Class A courtesy car if yours is being repaired at one of our approved garages. Also, we can't supply one if your car is stolen or written off, unless you've taken out optional hire car cover."***

A Class A car would typically be a small hatchback type of vehicle, it wouldn't be equivalent to the policyholder's vehicle (unless upgraded courtesy car cover had been added to the policy). And the policy terms make clear it would only be supplied while a policyholder vehicle was being repaired at an approved repairer. But in the circumstances of this case, that would require Mr C to make a claim under his policy and Alwyn to arrange repairs (as they initially offered to do) through one of their approved repairers. Until or unless Mr C makes a claim for the damage to his vehicle, then the courtesy car provisions of the policy wouldn't come into effect.

On the issue of the policy excess, Mr C feels he shouldn't have to pay any policy excess as the accident wasn't his fault. However, the policy excess is part of the policy and therefore a contractual obligation. In accepting the policy terms, Mr C accepted that should he need to make a claim then he would have to pay the relevant policy excess (either a compulsory excess and/or any voluntary excess he choose to add when taking out the policy). Where a claim is made and the relevant excess payable, then the excess is considered an uninsured loss and may be something the insurer can seek to recover from the third party insurer where they believe they are liable for the claim. Of Mr C could seek to recover the excess directly, or through motor legal cover (if taken out as part of the policy).

In terms of the communication between Mr C and Alwyn, he's set out detailed dates when he emailed Alwyn but didn't receive any responses, as well as unsuccessful calls. Having looked at the evidence and information supporting what he's told us, I can understand his frustration waiting for responses. But equally there are instances of Alwyn unsuccessfully trying to contact Mr C and the fact he has declined to respond to the three options presented to him by Alwyn (or confirm whether he wants to make a claim).

On the CCTV footage issue, Alwyn did pursue this, but with Mr C declining to say he wants to make a claim under the policy and the third party insurer confirming they wouldn't be bringing a claim of their own, then it's understandable that Alwyn wouldn't want to pursue this aspect any further. Which means they haven't acted unfairly or unreasonably.

Taking all these points into account, I don't think Alwyn have acted unfairly or unreasonably in the circumstances of this case, so I won't be asking them to do anything further.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 March 2025.

Paul King

Ombudsman