

The complaint

Ms G has complained about the way U K Insurance Limited (UKI) handled her claim under her car insurance policy for damage to her car and that it eventually turned it down.

Any reference to UKI includes its agents or trading names.

What happened

The facts of this case are well known to both parties, so I will not set them out in detail. In summary, a warning light came on in Ms G's car, and she took it to a garage I'll refer to as Garage 1. They said there was an issue with the timing, and it needed to go to a specialist garage for repair. Ms G took it to Garage 2. Ms G thinks this garage was negligent and caused catastrophic damage to the engine of her car. It also dismantled some of the engine and left the parts in the back of the car. She then took the car to another garage (Garage 3) who said the engine needed to be replaced. Ms G then made a claim for the damage caused to her car by Garage 2. UKI gave her the impression that it would accept her claim and even suggested it would write her car off and pay her the market value, less the policy excess. But it eventually turned down the claim on the basis her car was not damaged accidentally, and the problem was due to mechanical failure. Ms G complained to UKI. It admitted it hadn't handled her claim well and paid her £750 in compensation for distress and inconvenience. However, it wouldn't alter its position on the claim itself.

Ms G asked us to consider her complaint. When she did so, she also mentioned UKI hadn't refunded the premium she'd paid when she unnecessarily renewed her policy, despite saying it had done so. But I understand she has now received this. So, I have not considered this aspect.

One of our investigator's considered Ms G's complaint and explained that she didn't think it should be upheld. This was because she felt UKI had paid enough in compensation for its poor handling of the claim. And because she felt its decision to turn it down was reasonable based on the evidence available.

Ms G wasn't happy with the investigator's view. So, the case was referred to me for a final decision.

I issued a provisional decision in which I set out what I'd provisionally decided and why as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I can see that since her car was damaged it has been a very difficult period for Ms G. And I completely agree with her that UKI's handling of her claim was very poor indeed. It should not have given her the impression it was going to accept her claim throughout the claim process and then told her at the end it was turning it down. It also could have communicated with her better generally and been quicker with its investigation. Its failings clearly did cause Ms G considerable distress and inconvenience. However, I'm satisfied that the £750 UKI has

paid in compensation for this is more than adequate for its poor handling.

Turning now to the damage to Ms G's car. Having reviewed the evidence, I'm persuaded that negligence on the part of Garage 2 did cause damage to Ms G's car. And that this is covered by her policy. I'll explain why.

It is not in dispute that after Garage 1 told Ms G that there was an issue with the timing on her car, she drove it to Garage 2. And she provided Garage 2 with the diagnostic report from Garage 1. In view of this, I think Garage 2 should have realised it should not start Mrs G's car either to drive it into its workshop or once it was in there. And it has admitted driving it into the workshop. And I think it is most likely it was this that led to the catastrophic damage to the engine. I say this because the photographs I have seen of the pistons, the fact Ms G drove the vehicle to Garage 2, and the noise Garage 2 has admitted the car was making when it drove it into its workshop suggest the catastrophic damage happened while it was under Garage 2's control. This is also supported by the report Ms G has provided from Garage 3.

I've noted UKI's engineer's view that the problem with the engine on Ms G's car was an issue waiting to materialise. And this is of course correct. But I don't think the issue would have materialised but for Garage 2 starting and driving Ms G's car. So, while I have noted the engineer's view that the damage Ms G has claimed for was not to do with anything done by Garage 2, I don't think the evidence supports this. I think it shows it is most likely it happened due to Garage 2's inappropriate decision to start and drive Ms G's car after she had left it in their care. Had it not done this, I think it could have been repaired at a reasonable cost and would not have needed a replacement engine and ended up as a total loss.

Ms G's policy covers accidental damage to her car. And because I do not think Garage 2 damaged it intentionally, i.e. it was most likely due to negligence on its part, I think it is fair to say that the damage that occurred to it after it went to Garage 2 was accidental damage and is covered by Ms G's policy. This is unless, of course, there is an exclusion UKI is entitled to rely on to refuse it.

UKI has suggested it can rely on the exclusion in the policy for failure caused by a mechanical problem. But I do not consider it can rely on this exclusion. This is because the damage Ms G's has claimed for was not caused by a mechanical problem, it was most likely caused by the negligence of Garage 2. This did of course cause a mechanical problem, but this was not the proximate cause of the damage Ms G has actually claimed for.

This all means I consider the fair and reasonable outcome to Ms G's complaint is for UKI to settle her claim in accordance with the claim settlement terms in her policy. The policy says UKI will pay to repair the damage to the insured car up to its market value at the time of the loss (or damage). The market value is the cost of replacing the car in the retail market with one of the same make and model, and of a similar age and condition at the time of the loss or damage.

Just before it turned Ms G's claim down UKI had decided it would pay the market value of her car at the point of loss because it was uneconomic to repair it. So, I think it is reasonable now for UKI to treat Ms G's car as a total loss when settling her claim. This means it needs to pay its market value at the time of the loss. However, at the point it was damaged by Garage 2, i.e. the point of loss, Ms G's car was already in need of fairly extensive repairs, which, from what Ms G has said, would have cost around £4,000. And this would have of course had a detrimental effect on its market value at this point. This means I think it would be reasonable for UKI to deduct the cost of these repairs from the normal market value of the car in April 2024.

Therefore, I think UKI needs to settle Ms G's claim by paying her the full market value of her car at the point it was damaged by Garage 2 in April 2024, less the cost of the repairs needed to her car at the point it went to them. It seems these would have cost around £4,000, but UKI will need to consider this and estimate the cost to establish what to deduct. UKI can also deduct any policy excess applicable. It would be helpful if UKI could let me know what it thinks the deduction for the repairs should be in response to this provisional decision. If it doesn't, my final decision will say that it can deduct £4,000. Because UKI will be settling Ms G's claim on a total loss basis, it will be entitled to take possession of her damaged car and dispose of it.

UKI should also pay interest on the amount due to Ms G at our normal rate of 8% per annum simple from one month after she submitted her claim to the date of actual payment. This is to compensate her for being without funds she should have had and for the fact she had to pay out to replace her car.

I'm not going to award compensation for the distress and inconvenience Ms G experienced as a result of UKI turning down her claim. This is because I'm satisfied UKI has already paid her a more than adequate amount in compensation for distress and inconvenience.

My provisional decision

For the reasons set out above, I've provisionally decided to uphold Ms G's complaint about U K Insurance Limited and require it to do what I've set out above.

I gave both parties until 6 March 2025 to provide further comments and evidence.

Ms G has responded with some further comments. She thinks the extra work Garage 2 suggested would be required to repair her car prior to them saying it needed a new engine wouldn't have been very much more than the £3,500 it had already quoted. And she thinks that only £3,500 to £3,750 should be deducted from the market value of her car to reflect this. She has explained that she does not want to retain her car if I decide UKI should write it off and settle her claim on this basis. She has also said was charged around £200 to recover her car to a specialist garage after UKI turned down her claim and she thinks UKI should cover this cost.

UKI has also provided further comments. It doesn't agree with my provisional decision on the basis it does not think it is more likely than not that the damage to Ms G's car happened due to Garage 2's inappropriate decision to start and drive it after she had left it in their care. It's pointed out that there was nothing in the report provided by Garage 1 to say Ms G's vehicle should not be driven. And it has further explained that – given the fact Ms G had driven her car from Garage 1 to Garage 2 – it does not consider Garage 2's decision to drive Ms G's car into its workshop was unreasonable. In other words, it does not think it was negligence on the part of Garage 2 that caused the catastrophic damage to Ms G's car. It considers it had a mechanical failure which is not covered by Ms G's policy. And it also considers the fact Ms G drove it after it had gone to Garage 1 contributed to this failure. It's also pointed out that the terms of Ms G's policy required her to take reasonable steps to protect her car. And it thinks that in continuing to drive it in the full knowledge of the engine issues Ms G failed to comply with this policy term.

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.

Having done so, it remains my view that it should be upheld for the reasons set out in my provisional decision. As I explained in my provisional decision, I think if it had read and properly interpreted the diagnostic report Ms G provided to it from Garage 1 it should have realised it was not appropriate to start Ms G's car and that doing so could cause catastrophic damage to the engine. So, I still think starting the car was negligence on the part of Garage 2.

I agree it wasn't a good idea for Ms G to drive her car from Garage 1 to Garage 2 and Garage 1 should have made this clear to her. But it seems it didn't. And as a lay-person Ms G would not have realised the danger of doing so. However, I do not consider the catastrophic damage to the engine happened when she did so. This is because, as I explained in my provisional decision, the nature of the damage in the photographs provided of the pistons, the fact Ms G was able to drive her car to Garage 2 without it breaking down and the noise Garage 2 has admitted the car was making when it drove it into its workshop suggest to me it is most likely the catastrophic damage happened while it was under Garage 2's control. This is also supported by the report Ms G has provided from Garage 3.

I do not agree that by driving her car to Garage 2 Ms G failed to protect her car in accordance with the requirements of her policy. This is because she had no idea that in doing so there was a risk of further damage occurring.

I've noted Ms G's comment about the deduction of £4,000 for the cost of the outstanding work required to fix her car prior to it being damaged by Garage 2. And, bearing in mind at this point Garage 2 had already quoted £3,500 for the repairs and were suggesting more work was required, I'd be very surprised if it could have carried this out for as little as £250 including labour. And UKI hasn't provided any comments or evidence to challenge this. So, it remains my view that a deduction of £4,000 is fair.

I have also noted Ms G's argument that UKI should cover the cost to her of around £200 for having her car recovered to a specialist dealer following UKI's rejection of her claim. And I agree with her on this point. This is because this would not have been necessary if UKI had accepted her claim as it should have done. Ms G has said she can provide an invoice to support her payment of this amount. And interest will need to be added from the point she paid it to the point of reimbursement to compensate her for being without these funds.

I see no reason to alter my view that what UKI has already paid Ms G in compensation for distress and inconvenience is appropriate.

Putting things right

For the reasons set out above and in my provisional decision, I've decided to uphold Ms G's complaint and require UKI to do the following:

- Settle Ms G's claim by paying her the full market value of her car at the point it was damaged by Garage 2 in April 2024, less the £4,000 for the cost of the repairs needed to it at the time it was damaged and any policy excess applicable. As Ms G doesn't want to retain her car, it will become UKI's property; and it will need to collect it and dispose of it.
- UKI should also pay interest on the amount due to Ms G in settlement of her claim at our normal rate of 8% per annum simple from one month after she submitted her claim to the date of actual payment.*
- Reimburse the amount Ms G paid to have her car recovered to a specialist dealer after it rejected her claim, subject to Ms G providing an invoice to show she paid this amount. Plus, interest at 8% per annum simple from the date Ms G paid it to the date of payment.

* UKI must tell Ms G if it has made a deduction for income tax. And, if it has, how much it's taken off. It must also provide a tax deduction certificate for Ms G if asked to do so. This will allow Ms G to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.

My final decision

I uphold Ms G's complaint about U K Insurance Limited and require it to do what I've set out above in the 'Putting things right' section. Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 31 March 2025.

Robert Short
Ombudsman