

The complaint

Mr G has complained about Mulsanne Insurance Company Limited's referral of him to an Accident Management Company (AMC) after he was involved in a car accident.

Any reference to Mulsanne in this decision includes the actions of Mr G's broker where the broker is acting as Mulsanne's agent.

What happened

Mr G held comprehensive motor insurance with Mulsanne. After he was involved in an accident, Mr G called Mulsanne to make a claim. Mr G said he tried to call again the next day but had trouble getting through. He received calls from a company, that I will refer to as R, saying they were dealing with the claim. Mr G emailed Mulsanne to ask if he should speak with R. Mulsanne replied to say that R were acting on its behalf.

R is a first notification of loss provider for Mulsanne. After taking details of the accident, R referred Mr G to an AMC that I will refer to as P to arrange repairs.

Mr G became concerned about delays in getting his car repaired and called Mulsanne for an update. Mulsanne said that P was an AMC who was dealing with Mr G's claim outside of his car insurance policy. Mulsanne said Mr G had signed a separate agreement with P and so it had closed the claim on his policy.

Mr G complained to Mulsanne. He was unhappy with delays in his car being repaired and said he expected Mulsanne to help him with his claim as his insurer.

Mulsanne said that the delays were due to the third party insurer accepting liability. However, if Mr G wanted to revert to claiming on his policy he could do.

Unhappy with Mulsanne's response, Mr G brought his complaint to our service. He told us about the delays he'd experienced and that he thought P was acting on Mulsanne's behalf. He said Mulsanne sent him letters to say his insurance would run out if he didn't MOT his car. However, he couldn't MOT it because it was still awaiting repair.

Our Investigator looked into Mr G's complaint and recommended it be upheld. She thought Mulsanne had not provided clear information when referring Mr G to P and asked Mulsanne to pay Mr G £250 to compensate for his distress and inconvenience.

Mr G accepted our Investigator's view but Mulsanne didn't. It said Mr G had signed agreements with P so their terms and conditions must have been acceptable to him and it was clear what he was agreeing to. It said Mr G did not choose to revert to claiming on his policy when given the option because he did not want to pay his excess.

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.

When Mulsanne, or R on its behalf, referred Mr G to P it was obliged to provide him with information that was clear, fair and not misleading, in line with its obligations under Principle 7 of the FCA Handbook: Communications with clients (see PRIN 2.1R The Principles) and ICOBS 2.2.2R (Clear, fair and not misleading rule). In the circumstances of this case, this means that when Mr G contacted Mulsanne to claim it ought to have provided him with clear information about his options, so he could decide how best to proceed with getting his car repaired.

I've started by considering the information that Mulsanne provided to Mr G. I have seen a message from Mulsanne to Mr G which said that R is acting on "our behalf". So, I think this reasonably indicated to Mr G that the calls from R were on behalf of Mulsanne.

I've listened to calls between R and Mr G. The order of the calls is unclear but I do not think that makes a difference to my decision and have referred to them as first, second and third calls for ease of reference.

During the first call R asked, "are you looking to claim through your own policy". Mr G initially said yes but then sounded unsure and said he wasn't sure how it worked. R then asked if Mr G was "looking to claim through the third party's insurer" and Mr G said that he was. R told Mr G that someone would be in touch to explain the next steps.

In an internal email, R accepted that it made an error in this call and did not discuss what it calls non-fault services.

In a second call R read out a script to Mr G. The relevant part of the script said:

"It is important that you fully understand that if your claim is accepted any services provided to you will be funded using our credit facilities. Whilst you are ultimately responsible for these charges please know that our role is to review your claim first and ensure that we are confident that we can recover these costs from the third party insurer. If we do not feel confident recovering the costs we will explain why and suggest that you do not use our services. However, if you provide us with any misleading information or have attempted any type of activity which prejudices the claim preventing recovery of the costs then these would be charged to you. Is that ok?"

In a third call, R told Mr G it was going to deal with the "claim" on his behalf and would provide him with a hire vehicle.

It is unclear whether R was acting as Mulsanne's agent in the second and third calls. The content of the second call indicates to me that during this call R was no longer acting as Mulsanne's agent and was instead acting as P's agent. If that is the case, I have not been provided with anything from Mulsanne to persuade me that Mr G should have been aware that R might not only act on behalf of Mulsanne and I think it would have appeared to him that R continued to act as Mulsanne's agent as it had already told him R was acting on its behalf.

From the calls I have been provided with, I do not think that Mulsanne provided Mr G with clear, fair and not misleading information in a balanced way to enable him to choose which option he would like to use. Mr G initially indicated that he wanted to claim on his policy and I do not think Mulsanne made it clear what claiming on the third party's insurance meant. I do not think Mulsanne made it clear that P was acting as a separate company, or that the claim would be dealt with outside of his regulated insurance policy. I do not think that the referral set out both the advantages and disadvantages of using an AMC rather than claiming on his policy. Neither did it explain that Mr G that he might not be able to complain to Mulsanne or

our service if something went wrong.

I appreciate that Mr G signed an agreement to use P's services but I do not think the referral was clear enough for him to understand the implications of this or that he was agreeing for P to recover the costs of the accident outside of his insurance policy.

As I do not think that Mulsanne, or its agents, provided Mr G with clear, fair and not misleading information I have to consider what he would have done if the information had been clear as well as the impact of the poor referral on him. Having done so, I am not persuaded that Mr G would have used P rather than claiming on his own policy. Mr G's policy provides for a courtesy car while his is being repaired and I haven't seen anything to indicate that Mr G needed a like-for-like vehicle.

During the first call Mr G told R that the third party driver had not admitted responsibility, so I think that should have given an indication to R that the claim might not be accepted as quickly as Mr G might expect. And if Mr G had known this I think he is unlikely to have wanted to use P.

Mulsanne said Mr G did not revert to claiming under his policy as he did not want to pay his excess. While Mr G would initially been liable for his excess, this is something he can claim back as an uninsured loss. I've not seen anything to indicate that this was explained to Mr G, and so while he might not have wanted to pay his excess, I'm not persuaded this means he wouldn't have initially chosen to claim on his policy as it was something he could claim back.

While it's impossible to know what would have happened if Mr G had been given clear information, I have to reach a decision based on what I think is more likely than not. And I haven't seen anything persuasive to indicate that Mr G would more likely have used P if he had been given clear information.

I understand from Mr G that he got his car back over three months after the accident. While I can't hold Mulsanne responsible for P's actions, I can consider the impact of the poor referral on Mr G.

While making a claim will always lead to a certain amount of distress and inconvenience, in this particular case, I believe that the poor referral has caused Mr G additional unnecessary distress and inconvenience. Mr G had to wait longer than he would most likely have needed to if his own insurer had dealt with the claim and had the inconvenience of needing to contact the parties on a number of occasions to sort things out. He has also had the distress of finding out that his claim wasn't being dealt with by his insurer and being told that his policy might lapse whilst not being able to do anything about getting an MOT. I think the fair and reasonable outcome for the distress and inconvenience caused is for Mulsanne to compensate Mr G for this.

Putting things right

I think that the £250 recommended by our Investigator is a fair and reasonable amount of compensation for Mulsanne to pay Mr G to compensate for the unnecessary distress and inconvenience it caused.

My final decision

My final decision is that I uphold this complaint and require Mulsanne Insurance Company Limited to do as set out in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or

reject my decision before 4 August 2023.

Sarann Taylor
Ombudsman