

The complaint

Mr R has complained that Acromas Insurance Company Limited has failed to deal with his claim under his motor policy following an accident, which wasn't his fault. It also sought to increase his premium consequently, which he didn't think was fair.

What happened

Mr R was involved in an accident on 20 July 2022. He said the other driver drove into the back of his car causing damage to include damage to the exhaust and possibly the catalytic converter. Mr R also said he suffered whiplash.

Acromas also said that when it contacted Mr R on 22 July 2022 to discuss the accident and claim, Mr R said he didn't have time to talk. It said when it tried again to talk to him on 17 August 2022, Mr R refused to complete the claim form over the phone as he was getting legal advice from his solicitor first. Acromas also noted Mr R complained about the lack of service he received.

Acromas said it tried to phone him on 25 August 2022 to discuss his complaint but there was no answer. So, it wrote to him on 26 August 2022 acknowledging his complaint. And wrote again on 13 September 2022 saying it was still looking into it.

Acromas said it called Mr R on 31 August 2022 to complete the claim, but Mr R said he wasn't at home so was not able to take the call. He mentioned the ongoing delays. It was arranged that Acromas would call him again the next day.

Acromas said it discussed the claim with Mr R on 1 September 2022 and it then obtained the sketch of the accident scene plus a statement from Mr R. On this call, Acromas said it confirmed his car would be deemed a total loss. It said this was due to the damage Mr R said was caused and the age of the car. It explained this was something its agents are encouraged to look at in order to speed up the claims process. There is a matrix they would look at to determine if a car would be deemed a total loss. It said the process was explained to Mr R and that he gave details of his account details for when he accepted the offer of the total loss value. It said Mr R then mentioned he wanted to retain his car and he also said he was aware of the value of his car. It was also discussed that there would be a marker on the car, given it was so likely his car wasn't economical to repair.

On 30 September 2022 Acromas wrote to Mr R confirming that it was seeking to hold the other driver responsible for causing the accident. It explained it would assist him in recovering any policy excess he might have to pay. But as he had no additional legal cover on his policy called legal protection, it couldn't help him in recovering any other uninsured losses incurred as a result of the accident. It said once it got the admission of liability from the other driver's insurers it would be able to reinstate his No Claims Discount.

Acromas said Mr R told it on 5 October 2022 that he didn't want Acromas to collect his car to inspect it. Acromas said it then explained he should get his own estimate of the repair costs and send it in. And it appeared to arrange a hire/courtesy car as a gesture of goodwill. This

was at the same time that Acromas sent Mr R an email on the same date asking for a formal estimate for the cost of repairs on headed notepaper, which also should include digital images of the damage. The email explained its instructed engineers should be able to confirm things within 5 working days after receipt of this estimate and photographs. This was also confirmed to Mr R in the phone call of 1 September 2022.

Acromas said that as it then didn't hear from Mr R, it wrote to him on 10 November 2022 explaining it couldn't keep his claim open indefinitely so it needed to hear from him within 14 days otherwise it would close its file. Mr R called Acromas on the same day where Acromas noted Mr R was very upset with the delays and wanted compensation. He also complained about the increase in premium. Acromas said the claim would have increased the premium because the claim isn't finalised yet. And it was standard insurance practice to note an open claim on his insurance record. It also said it would get someone from the repairs team to contact him.

On 25 November 2022 Acromas' file shows that the other driver's insurers confirmed liability for Mr R's accident was admitted. Acromas told this to Mr R on 14 January 2023 and confirmed his No Claims Discount had been reinstated.

Acromas said it contacted Mr R on 31 January 2023 and confirmed it admitted its handling of Mr R's claim was poor to include a lack of communication and it paid Mr R £325 compensation for this. It confirmed this by its final response letter of 3 February 2023. Plus, it also sent him a hamper earlier in the proceedings by way of apology.

Acromas noted in this call on 31 January 2023 that Mr R wasn't happy he was being told he would have to deal with his uninsured losses like his whiplash with the other driver's insurers himself because he has no add on legal protection on his policy. He was unhappy he had temporary repairs on his car and the promised hire car never materialised.

Mr R said he emailed Acromas on 4 April 2023 saying it was a month or more since he had heard from Acromas. He referenced that in response to Acromas asking what he wanted, he would accept £1,500 less £100 to retain/keep his vehicle as his make of car were being sold for between £1,200 - £1,999. He wanted reimbursement of the cost of his repairs undertaken to the exhaust plus the cost of the MOT of £115. He also wanted additional compensation of £1,000. And he wanted compensation for the whiplash he suffered of £1,000. The total therefore that he would accept as a settlement was £3,515.

Acromas wrote another final response letter on 17 May 2023 to Mr R in response to his complaints made over the phone on 17 February 2023. It didn't uphold his complaint about having to recover his uninsured losses himself from the other driver's insurers. It explained that since he hadn't chosen the add on legal protection cover on his policy, it couldn't help him with these losses. As it couldn't get hold of him to make progress on his claim and now sought to write his car off, it needed this estimate from his own repairer which it has asked for, to ensure it was right to write off his car. As it never received any such repair estimate from him, it couldn't now progress this part of his claim. Likewise, it said as regards the lack of the hire/courtesy car, no hire/courtesy car is available when it's this clear that the car would be written off. This is because Mr R didn't choose the hire car add on his policy either. It agreed there was a lack of contact from the claims department and it paid him another £50 compensation for this.

During the phone calls Mr R had with the investigator to include with his friend who was helping him, he explained he never received any hire car as originally promised as he was told there was nothing available. He was told they would call him again but that never happened, so he never got a hire/courtesy car.

Also, in these call recordings of his calls with the investigator he said Acromas had offered him £900 – it's not clear if this was less the salvage value or not. When asked why he didn't accept it, he said he never received a reply to his proposals which he sent to Acromas on 4 April 2023.

The investigator issued her view on 11 September 2023. She said that given Acromas had no repair invoice and hadn't been able to look at the car, she wasn't upholding his complaint.

Mr R was very distressed by this and asked for the matter to be referred to an ombudsman, so his complaint has been passed to me to decide.

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, I'm not upholding this complaint. I'll now explain why.

I do appreciate and understand that Mr R will be very disappointed with my decision. He has said several times that his health isn't very good and it's very obvious from the call recordings how distressing and upsetting he has found his dealings with Acromas to be. I also understand, again from the call recordings, that he has very definitive views of what a motor insurance policy should cover and that it's clear he doesn't understand why Acromas isn't dealing with his claim like he thinks it should do. So, I hope my decision will clearly explain Acromas' duties given the actual terms and conditions of the policy Mr R chose to buy.

This service is also impartial. Our role is look at the evidence provided by both Mr R and Acromas and decide if Acromas has adhered fairly and reasonably to its own policy terms and conditions and the relevant insurance industry standards in dealing with Mr R's claim.

Mr R chose Saga Select cover which renewed on 26 June 2022. Mr R had the option to buy additional legal protection but didn't do so. The policy also only provides a guaranteed replacement car (hire/courtesy car) if the car is being repaired at one of Acromas' approved repairers up to the point where the car is declared a total loss. The policy says all this in the 'cover at a glance' section.

The policy goes on to detail the following under the 'Loss and Damage' section.

'We have the right to choose which action to take in the case of any claim and we will do one of the following:

- *repair the damage; or*
- *replace what is lost or damaged beyond economical repair; or*
- *pay you cash for the amount of the loss or damage.*

If we ask, you need to give us any evidence to support your claim. We will confirm exactly what we need.

We may decide to appoint an independent assessor to inspect your vehicle to support the evidence you provide or to confirm your vehicle has been maintained in a roadworthy condition in accordance with General Condition 2a.

The most we will pay is the market value of your vehicle, accessories and spare parts at the time of the loss or damage, unless covered under Part 4 of the 'Loss or damage' section of this policy. If your vehicle is under a hire purchase or leasing agreement, we will pay any claim to the legal owner in the event of a total loss. We will also pay costs we have authorised to:

- *protect your vehicle and take it to the nearest competent repairer if your vehicle cannot be driven because of loss or damage covered by this policy;*
- *deliver your vehicle to your address in the territory following repair.'*

[Bold type is my emphasis.]

What is crucial here is that Acromas has the right to decide whether to pay for the repair the car or not, not necessarily Mr R. It's also Acromas' right to declare the car as a total loss or not too and again that's not down to Mr R. And very importantly Acromas is perfectly entitled to ask Mr R for any evidence it deems fit in support of his claim. These are the rights of Acromas, which in law, Mr R consented to by buying this policy. These sorts of rights and duties are deemed reasonable and fair and are common in all motor policies.

As Mr R didn't want Acromas to take his car away for any assessment of the damage, Acromas asked him to get a repair estimate of the accident damage from a repairer of his own choice. It wanted the estimate to be on the headed paper of the repairer in order to show its legitimacy. The policy terms detail how this operates as follows:

'5. Claims outside the Saga Claims Service repairer network You may choose to make a claim for loss of or damage to your vehicle under this policy without using the Saga Claims Service repairer network (see pages 47 to 49 for details). If so, you will need to notify us of the incident and you will not be entitled to any of the benefits of this service.

You will need to complete a claim form over the telephone and obtain an estimate for repair for our approval. Once approved, whether or not an inspection is required, we will authorise repairs subject to any excess that applies. We will pay the cost of transporting your vehicle to the nearest competent repairer following an accident.'

So, I don't consider Acromas did anything wrong in asking Mr R to get this repair estimate given he didn't want Acromas to take his car away for assessment. That's because it's very reasonable for an insurer to get some sort of independent verification of the damage done to a car in an accident in the absence of not being able to verify that damage itself. As sadly otherwise the claims could be inflated, or other damage not caused by the accident might be claimed for too. I've not seen the evidence that Acromas offered Mr R £900 less the salvage of £100 as Mr R said but that's not to say Acromas didn't offer that either. But obviously that figure would have been confirmed or not once either the repair estimate was received or Acromas inspected Mr R's car.

Given that hasn't happened, I also don't think Acromas has done anything wrong in not progressing Mr R's claim for the damage to his car. Acromas itself thinks it's likely the car will be written off but in order to confirm that fairly, it either needs to see the car itself or have a legitimate repairer do so instead. This is solely because Mr R said he wanted to keep his car. If Mr R didn't want to keep his car, Acromas would have checked the accident-related damage by taking his car away, and most likely (although this isn't an absolute foregone conclusion either) confirmed it was uneconomical to repair and it would have paid him the market value of his car, less the salvage value if he wanted to keep the car. Or then paid him a cash payment in lieu of the repairs.

Without Mr R permitting either of those things to happen, he hasn't proved his claim for the damage to his car from the accident. And without that proof, Acromas can neither pay Mr R the market value of his car, nor the cost of repairs nor indeed ask the other driver's insurers to refund its payment to him. There's no dispute that the accident happened but as yet, Acromas has no actual proof beyond what Mr R has said of what the actual damage to his car is.

Mr R has shown us an email he said he sent to Acromas on 4 April 2023 which detailed out what he believed to be a reasonable settlement. I haven't seen a copy of that email on Acromas' file. And I noticed that on the copy Mr R sent us that the recipient on it is completely blank so there is no detail or confirmation of who within Acromas Mr R might have sent this to. I have however detailed the contents of it above to ensure Acromas is now aware of that.

Just so Mr R is aware also, the motor insurance industry uses valuation guides to assess how much a car is worth. And Mr R is correct when he said the price of second-hand cars has increased considerably in the past few years, as many of the valuation guides also show. However, it is for Acromas to provide the valuation for Mr R's car not for Mr R to simply decide that value himself, without any reference to Acromas and he has done in the email he said he sent to Acromas on 4 April 2023. Our approach is that the use of the relevant valuation guides, plus where appropriate sales adverts, will tend to show the fair value of a car, which isn't of course an exact science. Our website describes our approach to car/vehicle valuations in much greater depth. Should Mr R wish to proceed with his claim for the damage of his car and should Acromas deem it a total loss, then I am sure Acromas will adhere to our very well publicised approach on car valuations too. But without any repair estimate from Mr R's own repairers or without letting Acromas inspect the car, there is no duty on Acromas to pay any claim for Mr R's car.

Mr R believes Acromas should compensate him for his whiplash injury. However, there is no duty on Acromas to do this. This is because it's an uninsured loss as in, it's not a risk that is insured under Mr R's policy with Acromas. The injury occurred solely due the negligence of the other driver. Therefore, in law, it is for the other driver's insurers to consider what if any compensation might be payable for any injury Mr R suffered, not Acromas. For the avoidance of any doubt the policy does provide personal accident cover, but the type of injury Mr R said he suffered in the accident, namely whiplash isn't listed as being covered.

Acromas detailed this very clearly in its letter to Mr R of 30 September 2022 and it explained if he made a claim for the damage to his car, all it would do is seek to recover any excess (also an uninsured loss) payable from the other driver's insurers. It also explained what I've just said here that it had no duty to help him with any other uninsured losses like his whiplash injury.

In some motor policies to include this one issued by Acromas; the insurer will provide separate legal assistance to help someone in Mr R's position with something like a possible whiplash injury to make a claim from the other driver's insurers. But it charges an extra premium for this service and Mr R didn't opt to pay that extra premium in taking out this policy, so therefore there is no duty for Acromas to help him make his personal injury claim to the other driver's insurers.

As the other driver's insurers have admitted liability for causing the accident, it is therefore for Mr R to provide the medical evidence of any injuries or other associated out of pocket expenses to the other driver's insurers. Just because Mr R is merely stating he was injured is unlikely to be sufficient as they will no doubt need to see medical evidence of the injury and evidence of appointments with doctors etc to show how many times he had to see any doctor about his injuries too. So, if Mr R wants to pursue any claim for personal injury, he

must now contact the other driver's insurers and provide whatever evidence they might require.

I note Mr R has now said his car is in storage and is no longer insured. But he has said that he was very upset when he realised his insurance premium might increase. He couldn't understand why he was going to be penalised when he didn't cause the accident. That's understandable. However, it is permitted by the regulator that insurers are entitled to record a claim is open on a policyholder's record until the other driver's insurers pay the claim. As Mr R said he wanted to make a claim for the damage to his car Acromas did nothing wrong in showing on Mr R's insurance record that he had an open claim. It's also clear Mr R continues to want that claim to be paid.

Therefore, when such an open claim is on someone's record like this, it changes the risk profile of the policyholder such as Mr R. And that tends to increase the premium payable. Indeed, just being in an accident even when you didn't cause it, can also change the risk profile too. However, Mr R said his car is no longer insured, so I haven't investigated whether any premium increase was fair or not. But again, it's not unusual for premiums to increase like this following an accident irrespective of who caused it.

Mr R was also of the view that he should have been provided with a hire/courtesy car, given his car was damaged. The policy terms detail how this operates as follows:

In the 'cover at a glance' section it says:

'Guaranteed replacement car – We'll give you a replacement car while yours is being repaired after an accident anywhere in the UK, or until it's declared a total loss (if you use our repairer network).'

The policy provides further details this as follows:

'6. Replacement car cover

If your vehicle is damaged in circumstances that give rise to a valid claim under Part 1 of the 'Loss or damage' section of the policy, we will ask our nominated supplier to provide you with a replacement car for the duration of the repair.

The replacement car will be provided within one working day of repairs commencing, unless you agree an alternative date with us.

If you request a replacement car before repairs start because you believe your vehicle is immobile, and if we agree with you, we will arrange for a replacement car to be provided within one working day of our agreement.

The car provided will be a small manual transmission hatchback up to 1200cc, such as a Ford KA.'

Technically that means Mr R would only be entitled to a hire/courtesy car if his car was being repaired by one of Acromas' own approved repairers, which clearly Mr R didn't want to happen as he didn't want Acromas to take his car away.

Generally, also, no such hire/courtesy car is provided if the car is a total loss. Acromas felt it was more than likely Mr R's car would be a total loss so in those circumstances it had no duty to provide any hire/courtesy car. However, I note in Acromas' file that it intended to provide a hire/courtesy car as a gesture of goodwill. And it set up the order with the hire company. Sadly, Mr R said the hire company instructed, told him no car was available right at that time. He said the hire car company promised to call him back, but it never did.

Then as the matter progressed when it was clear Mr R hadn't provided the repair estimate and didn't want Acromas to inspect his car, Acromas never mentioned the provision of the hire/courtesy car again. Acromas mentioned a hire car add on in one of its final response letters which like the legal protection it appears Mr R didn't pay any extra premium for this either.

However, as no conclusion could be made about whether his car was repairable or a total loss, as Acromas was waiting for Mr R to produce the evidence, and it was very clear Mr R didn't want one of Acromas' approved repairers to look at his car, I think on balance Mr R wasn't then entitled to any hire/courtesy car.

Lastly Mr R has complained strenuously that he hasn't received appropriate service from Acromas. As I've explained above, the lack of progress on Mr R's claim for the damage to his car isn't all down to Acromas though, because Acromas has asked Mr R for the necessary evidence to proceed with his claim and Mr R is yet to produce that evidence. And until he does produce it, I don't consider Acromas has overly delayed in processing his claim.

Acromas has admitted that it ought to have done some things better. It agreed there was a lack of support from its claims department; it agreed some call backs were promised but not delivered on; it agreed its claims manager didn't phone him when it was agreed they would; and it agreed there were significant delays in liability being confirmed. For this Acromas paid Mr R the sum of £325 compensation in February 2023. Acromas wrote a second final response letter in May 2023 where it paid him another £50 compensation for further delays in contacting him by its claims department. So, Mr R has now received a total of £375 compensation.

The investigator told Mr R that we had an approach as regards compensation for failings of this nature. And it's fully detailed on our website too. Effectively this is compensation for distress and inconvenience for poor service by the business namely Acromas here. We don't provide compensation for an accident like Mr R was involved occurring, as of course Acromas or any insurer isn't involved in any accident. We don't provide compensation for things that are outside the business' control either or if there is delay in something the consumer must provide like the repair estimate from a legitimate repairer. We also don't seek to punish businesses for making mistakes. Our ethos is to provide compensation for the consumer's distress for only what the business could have done better. I'm pleased Acromas acknowledged it could have done things better as I agree it should have provided a better customer service and returned calls etc when it said it would do so. I consider the amount of £375 it paid to Mr R to be fair compensation and very much in line with our approach for what it has done wrong. Therefore, I don't consider Acromas needs to do anything more.

To be clear here, unless or until Mr R provides the repair estimate for his car or now allows Acromas to inspect it by some other means, I don't consider Acromas has delayed in progressing his claim for the damage to his car as it told Mr R what it required in its call of 1 September 2022.

My final decision

So, whilst I do appreciate Mr R will be very disappointed, for these reasons, it's my final response that I don't uphold this complaint.

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

reject my decision before 18 January 2024.

Rona Doyle
Ombudsman