

The complaint

Mrs S and Mr S complain about Accredited Insurance (Europe) Ltd's ("Accredited") decision to decline their claim under their car insurance policy.

Mr S has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any actions taken, or comments made, by either Mrs S or Mr S as "Mr S" throughout the decision.

What happened

Mr S says, while driving along a road, he came across a ford. He says he stopped his car to assess the situation before deciding to cross the ford. He says there was a sign indicating a ford but no warning about the depth – and whether it's excessive. Mr S says his car is a SUV which naturally sits high off the ground. He says he started driving across the ford at very slow speed and, in attempting to cross it, the engine cut out, so he claimed against his policy.

Accredited declined Mr S's claim on the basis they don't accept Mr S took reasonable steps to safeguard his car. They said Mr S decided it was safe to drive his car through a body of water without knowing its depth. They said he could've turned around and returned to the journey on the main road, but he made the conscious decision to drive into the water. Accredited referred to the terms and conditions of Mr S's policy and said Mr S failed to comply with a condition which refers to deliberate loss or damage caused to a vehicle caused by anybody insured by the policy. Mr S complained about Accredited's decision and they responded and maintained their decision to decline the claim for the same reasons.

Our investigator looked into things for Mrs S and Mr S. She thought Accredited's decision to decline the claim was unreasonable and recommended they reassess the claim further and pay £150 compensation. Accredited disagreed so the matter has come to me for a decision.

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've decided to uphold the complaint. And, I think the investigator's recommendation is a fair way to resolve matters.

My role requires me to say how a complaint should be settled quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute. The main dispute here relates to Accredited's decision to decline the claim – and central to that dispute is whether Mr S failed to comply with the terms and conditions of the policy by acting in a manner which led to deliberate loss or damage to his car and not taking reasonable steps to protect his car from loss or damage. So I've considered all the information to determine whether Accredited's decision to decline the claim is fair.

My starting point is Mr S's car insurance policy booklet. This sets out the terms and conditions and under the heading 'Section 1 and 2: Damage to your car (whatever the cause)' it says, "*Deliberate loss or damage to your car caused by anybody insured by this policy.*" In a separate section, and under the heading 'Taking care of your car' it says, "*You or any insured driver must take all reasonable steps to: Protect your car from loss or damage...*" In support of their decision to decline the claim, Accredited say Mr S; decided it was safe to drive his car through a body of water without knowing its depth, could've turned around and returned to the journey on the main road, and made the conscious decision to drive into the water.

If an insurer turns down a claim because the consumer failed to take reasonable care, there needs to be evidence to show the consumer acted in a way that amounted to recklessness. The policy doesn't define reasonable care. The test of recklessness we use is set out in the leading legal case on 'reasonable care' – *Sofi v Prudential Assurance* (1993) 2 Lloyd's Rep.559. For Accredited to be able to reasonably turn down the claim on the basis that Mr S failed to take reasonable care there needs to be evidence to show he acted in a way that amounted to recklessness. That means Accredited needs to show Mr S recognised a risk but took it anyway by taking measures which he knew were inadequate or no measures at all.

So, I've thought about whether, in this instance, Mr S recognised that there was a risk of the engine cutting out by travelling across the ford but still decided to take that risk. In these specific circumstances, I don't think that was the case and I say this for a number of reasons.

During the first notification of loss call, Mr S describes the incident circumstances and explains he travelled through a ford and water got into the engine. He says he was driving along a stretch of road and he came to some water. He says, as he went through the water, his car was fine but, as he started coming out of the water, the engine cut out. He says his back wheels were still in the water at this point and when he tried restarting his car it wouldn't start. He says the water was still coming up, so he cleared the air filter to get his car started and moved it. Mr S says this then allowed other cars to then travel through the ford.

A further, and more detailed interview then follows, during which Mr S explains he made a wrong turn when following his sat-nav. He says the sat-nav then recalculated the route and he continued along this route and came across the ford. He says there was a sign indicating a ford but there were no signs warning of flooding. Mr S says he stopped and looked at the water to assess the situation. He explains immediately prior to entering the water he did come to a complete stop and then entered the water at 2-3mph. Mr S explains before entering the water, there was no way of seeing how deep the water was. He says he did notice the water hadn't overflowed along the sides and there wasn't any flooding to the surrounding field, so he assumed the water was shallow and safe to travel through. Mr S says he did witness another car going through the ford and, on his approach to it, he'd passed other vehicles which he assumed had come through the ford. He says he later found out from a local resident there's a dip in the middle of the ford and vehicles do regularly get stuck there when there's rain.

So, taking this all into account, I don't believe Accredited have demonstrated Mr S caused deliberate damage to his car or didn't take reasonable steps to protect his car from damage. The first point I would make is that there's no dispute there was a warning sign indicating a ford along the stretch of road Mr S was travelling along. I've seen the image showing this, and it's a red triangle sign - meaning it's a warning sign - and in this case it's to warn drivers of a water crossing ahead. But it doesn't mean a driver should never, under any circumstances, attempt to cross it or that it's prohibited. There are certain weather conditions which might make crossing the ford more hazardous so it would be for a driver to carefully

judge whether it's safe to cross. There's no dispute that Mr S didn't know the depth of the water, so I've thought about the factors Mr S did take into account when deciding whether to enter the ford.

The information shows Mr S assessed the situation which took into account the area surrounding the ford. In his testimony to Accredited, he says the water hadn't overflowed into the surrounding field. So, while I accept Mr S didn't know the precise depth of the water, this shows he did take into account factors which would help assess the likely depth and whether it was safe to continue. He also considered his specific car and says, given he was in a 4x4 SUV, he assumed it would be safe to travel through. Mr S's car is a SUV style car – and one of the features of such car's is that they have raised ground clearance. Mr S says this featured in his assessment when deciding whether to travel through the ford – and I don't think it's unreasonable to take this feature into account.

Mr S also says he wasn't familiar with the road, and it was the first time he'd travelled along it. He says he later found out from a local resident there's a dip in the middle of the ford and vehicles do regularly get stuck there when there's rain. I think that's relevant in the circumstances here as it demonstrates Mr S wouldn't have been aware there was a dip or that cars regularly get stuck there. Having knowledge of these factors prior to entering the ford might suggest Mr S took a heightened risk in driving through the ford. But, having not travelled through this stretch of road previously, I'm persuaded by Mr S's testimony that, having passed other cars on his approach to the ford he assumed they'd travelled through it, and it was therefore safe for him to travel through it in his SUV car.

Mr S also says in the interview that the incident happened around 10.30am and there was light rain at the time. I haven't seen any information which suggests it was dark or visibility was reduced to such an extent that Mr S couldn't have made a reasonable assessment of the situation. So, I can't say Mr S acted recklessly and proceeded to travel through the ford without giving any due regard to carrying out an assessment on whether it was safe to proceed. The information shows he was able to take into account factors based on what he could see.

I can see Accredited say the ford sign was clearly signposted on the approach to the ford, so Mr S would've known of the risk of passing through it. They say the issue here is that Mr S was aware of the potential risk of driving through the ford and continued to do so and made an incorrect assumption that his car would pass through it undamaged. They say the fact that Mr S attempted to drive through the ford means his actions were careless and he didn't therefore act appropriately to protect his car from damage. I do acknowledge the points made by Accredited, but I'm not persuaded this demonstrates Mr S acted recklessly. I've already mentioned why and how I think Mr S took reasonable steps in assessing the situation and the factors he took into account. I'm further persuaded by Mr S's testimony when interviewed that he stopped to assess the situation and then drove at 2-3mph through the ford. I think this demonstrates Mr S did take reasonable steps to protect his car from damage.

I can see Accredited also say Mr S could've turned around and returned to the journey along the main road. I acknowledge it could be argued this step could've been taken when Mr S approached the ford, but that would be with the benefit of hindsight – and that isn't the test I'm applying here when deciding this complaint. I'm looking at what's fair and reasonable in the circumstances. I agree there was a degree of risk involved in Mr S deciding to pass through the ford, but I can't say he took a risk anyway by taking measures which he knew were inadequate or no measures at all. From the information I've seen, I'm satisfied Mr S did acknowledge a risk, but I'm persuaded by his testimony that he assessed that risk by taking into account relevant and reasonable factors to assess whether it was safe to travel through

the ford. And I'm also satisfied that he took measures to address that risk by driving slowly and cautiously through the ford.

In these circumstances, I think Accredited have unreasonably declined the claim. So I think the fair outcome is for Accredited to reconsider the claim. It's clear from the information I've seen Mrs S and Mr S have been caused upset and inconvenience as a result of Accredited's decision to decline the claim. During the interview, Mr S explains they're left with one car in their household, and he has explained to our service the inconvenience this has caused. It's clear the decision to decline the claim has upset Mrs S and Mr S particularly as they've maintained Mr S took reasonable care prior to, and while, driving through the ford. Taking this into account, I think Accredited should pay Mrs S and Mr S £150 compensation for the upset and inconvenience caused.

Putting things right

I've taken the view that Accredited have unfairly declined Mrs S and Mr S's claim. So, Accredited should reconsider Mrs S and Mr S's claim further, in line with the remaining terms and conditions of the policy. It is of course open to them to make any other further enquiries they feel are necessary, but I don't think it's reasonable for them to use the reasons they have to justify their decision to decline the claim. Accredited should also pay Mrs S and Mr S £150 compensation for the upset and inconvenience caused.

My final decision

My final decision is that I uphold the complaint. Accredited Insurance (Europe) Ltd must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 8 January 2024.

Paviter Dhaddy
Ombudsman