

The complaint

Mr L complains that Policywave Limited referred him to an accident management company ("AMC") for credit hire and repair when his car was damaged, who didn't handle his claim well.

What happened

Mr L's car was hit by a third party driver so he called Policywave to claim for the damage the accident caused to his car. Policywave referred the matter to an AMC who would repair Mr L's car and arrange a hire car while his was in for repair. Mr L said he wasn't given a choice and the AMC's role wasn't properly explained to him.

He's also complained about the quality of repairs carried out by the AMC. In particular, he's said his car hadn't been repaired using a manufacturing approved repairer and parts. Mr L said this has invalidated the warranty of his car and affected its value because it can no longer be sold as "manufacturer approved" when he decides to trade it in.

Policywave reviewed Mr L's complaint and didn't uphold it. They said the AMC is a specialist in claims involving driving instructors like Mr L. Policywave also confirmed the AMC is appointed to handle the first notification of loss calls on its behalf, but that the repairs to his car were not carried out under his motor insurance policy. Because of this, Policywave said they weren't responsible for the repairs completed by the AMC.

Unhappy with Policywave's response, Mr L referred his complaint here. He said he thought the AMC were Policywave's "accident claims team" and that by being told they'd claim directly from the third party's insurer, he thought it was his own insurer who was claiming from the third party.

I issued a provisional decision on 27 July 2023 where I said:

"The responsibilities of Policywave"

Before I address the merits of this complaint, I think it's first important to set out the different parties involved and Policywave's responsibilities, to make clear what I can and cannot look at in this decision.

Policywave explained that they appointed the AMC to log customer claims and explain customers' claim options. So, when Mr L called Policywave to report the damage to his car, he was transferred to the AMC to handle the call on Policywave's behalf. This means the AMC was acting as Policywave's agent. So Policywave are responsible for the AMC's actions or omissions during this call when they discussed Mr L's claim options and referred him for credit hire and repair.

However, Policywave's responsibility for the AMC's actions is limited to when the AMC were acting on Policywave's behalf - and Policywave are not directly responsible for any actions or omissions of the AMC outside of this. In other words, the AMC was acting in its own capacity when handling Mr L's claim – not on behalf of Policywave. And I don't have the

jurisdiction to consider the actions of the AMC.

So, to be clear, I am only considering what happened during the call between Mr L and the AMC (acting on Policywave's behalf) when he was referred for credit hire and repair, and whether the AMC, as Policywave's agent, met the required standards.

The relevant regulatory and other requirements

As Mr L's insurance broker, Policywave were obliged to provide Mr L with information that was clear, fair and not misleading, in line with their 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 L contacted Policywave to tell them about his 'non-fault' claim for damage to his car, Policywave 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 appreciate Policywave appointed the AMC to fulfil this task on their behalf, and I don't think there's anything wrong in appointing a third party to do this. But, in line with ICOBS 2.5.3G, a firm cannot delegate its responsibility under the regulatory system when relying on others – it retains regulatory responsibility for achieving the outcome required. This means Policywave are ultimately still responsible for making sure their regulatory obligations are met by any third parties acting on their behalf.

Under Principle 6 (PRIN 2.1R) Policywave were also required to pay due regard to the interests of Mr L as their customer and treat him fairly. And in line with the Customer's best interests rule under ICOBS 2.5.-1R, Policywave were required to act honestly, fairly, and professionally in accordance with the best interests of their customer. And, if any recommendations were made, Policywave were required to take reasonable care to ensure the suitability of their advice, in line with Principle 9 (PRIN2.1R).

If I find the AMC didn't meet these regulatory requirements during the call when they referred Mr L for credit hire and repair then Policywave would be held responsible.

The referral

I've reviewed the contents of the referral call Mr L had with the AMC and also the e-mail that was sent to him following this call. In the call there is no mention Mr L is stepping outside of his regulated insurance contract or what the implications of this may be.

The e-mail sent to Mr L after the call which confirmed the AMC are dealing with the claim goes on to say:

"You do have the option to claim through your own insurance rather than the other drivers if you wish to. The repairs maybe authorised slightly quicker, however you maybe required to pay your excess and any no claims discount could be affected until they can recover their costs back at the end of the claim."

While I agree this e-mail does explain Mr L could claim through his own insurance, I'm not satisfied it goes far enough to explain the differences to Mr L about how he can arrange for the repairs to his car so he can make an informed choice. I say this because it doesn't let Mr L know that by continuing with the AMC he's stepping outside of a regulated insurance contract, that he will need to enter a credit agreement for the repairs to his car and the hire car, that Policywave or his insurer aren't responsible for the actions of the AMC or that he could ultimately be held responsible for the credit hire charges and that any recourse he may

have if things go wrong aren't the same as he gets through his regulated insurance contract.

As I'm satisfied the referral was poor, I've looked at the implications of the poor referral on Mr L. I asked our investigator to ask Mr L what he would have done if Policywave had given him sufficient information as set out above. Mr L has explained that if he had been given the option of using the AMC knowing it wouldn't have used manufacturing approved parts then he would have used the manufacturer's AMC, because he said he has done before.

I've therefore looked at whether the AMC could have used manufacturing parts and whether this is something Policywave should have known. When considering this I can see that Policywave wouldn't know which garage the AMC would send Mr L's car too and so would have directed Mr L to discuss who the repairing garage would be with the AMC, as it's not something it has control over. When Policywave referred Mr L outside of his regulated insurance contract, I'm satisfied it would be fair and reasonable for Policywave to have let Mr L know he would need to speak with the AMC about which garage would repair his car, as it's not something Policywave would know or have control over.

So, to be clear, I'm satisfied Policywave didn't give Mr L clear, fair and not misleading information, but if it had he would still have agreed to use an AMC because he's said he would have used one - albeit a different one to who Policywave referred him to. So, while Mr L is unhappy with how the AMC dealt with the repairs to his car, I'm not satisfied that is something Policywave is responsible for.

However due to Policywave referring Mr L to this AMC, he now has the unnecessary distress and inconvenience of sorting out the issues with his car, which he wouldn't have had if he'd used a manufacturing AMC as it would have used manufacturing approved parts. So, when considering this along with the unnecessary distress and inconvenience Policywave caused by the poor referral, I'm satisfied £500 is a fair and reasonable amount for Policywave to pay Mr L to compensate him for this."

Both Policywave and Mr L responded to my provisional decision. Policywave said that the AMC is their approved call handler and so don't agree Mr L was stepping outside of his contract of insurance. Policywave said the AMC carries out repairs on behalf of the insurer and so don't think Mr L stepped outside the contract of insurance except for the provision of credit hire. As the AMC also carries out repairs on behalf of Mr L's insurance policy Policywave don't think Mr L would be in any different position to he would be now in regard to the repairs. Policywave also said when Mr L claimed previously, he didn't use a manufacturing AMC, it said he used the same AMC he used for this claim but without any issues.

Mr L responded and said the AMC are also the repairing garage and that as Policywave referred him to the AMC then Policywave should be responsible for the repairs. Mr L also said that due to the age of his car Policywave would know it needs to be repaired with manufacturing approved parts and Policywave would have known the AMC wouldn't do this. Mr L also said if he accepts my decision then it may prevent him taking legal action in relation to the repairs.

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.

In response to Policywave's comments, I would like to clarify that I'm aware of the capacity of the AMC when taking calls on behalf of Policywave, as explained in my provisional decision. While the AMC might also repair vehicles on behalf of the insurer, this still means

Mr L stepped outside of his insurance contract when the AMC repaired his car. I say this because Mr L didn't claim on his motor insurance policy, and so while his car was repaired by the same garage his insurer would have used, Mr L's insurer is not responsible for the repairs as they weren't done on Mr L's insurer's behalf. I'm therefore satisfied Mr L did step outside his contract of insurance for credit repair and hire.

If the AMC had repaired Mr L's car on behalf of his insurer, this service would be able to consider the quality of repairs. In particular, whether the repairer carried out the repairs using manufacturing approved parts and methods. I'm therefore satisfied Mr L has additional unnecessary distress and inconvenience to sort out the issues he has with the repairs, as this service is unable to consider the repairs against Mr L's insurer.

I've also considered Mr L's comments. While I understand he feels Policywave should be responsible for the AMC's actions, in relation to the repair, for the reasons explained above I'm satisfied the AMC were acting in their own right when repairing Mr L's car. I also understand Mr L said Policywave should be aware the AMC wouldn't use manufacturing approved parts to repair his car and so shouldn't have referred him to them. As explained above, if this had been raised with Policywave, given the repair is outside of his policy I think it would be fair and reasonable for Policywave to have directed Mr L to the repairer to discuss how it would be repaired. I'm therefore not going to tell Policywave to do anything else.

Mr L has also said by accepting my decision it may prevent him taking further legal action through the courts. As we're an alternative to the courts, if my final decision is accepted it would be legally binding. Therefore if Mr L wishes to take further legal action he would need to consider the impact accepting my final decision may have before doing so.

My final decision

For the reasons explained above and in my provisional decision, my final decision is that I uphold this complaint. I require Policywave Limited to pay Mr L £500 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 13 September 2023.

Alex Newman
Ombudsman