

The complaint

Mr H complains that Accredited Insurance (Europe) Limited should meet his claim on his motor insurance policy.

What happened

The subject matter of the claim and the complaint is a car, first registered in late October 2020.

For the year from 6 November 2021, Mr H had the car insured on a comprehensive policy with Accredited. Any claim for damage (except to glass) was subject to excesses totalling £600.00.

Unfortunately, Mr H reported to Accredited that on the evening of 25 October 2022, he'd driven the car on a flooded road and come to a standstill.

Mr H renewed the policy for the year from 6 November 2022.

By a letter to Mr H dated 9 November 2022, Accredited turned down the claim.

Mr H complained, through us, to Accredited that it wasn't treating him fairly.

He later told us he'd used his parents' car until 13 February 2023, when he got a temporary replacement vehicle.

By a final response dated mid-April 2023, Accredited turned down the complaint. Mr H asked us to investigate.

In late April 2023, Mr H told us that the car was at a garage waiting for parts to repair it at an expected cost of about £5,800.00.

In mid-May 2023, Mr H told us that the replacement vehicle had broken down and he was again using his parents' car.

He later showed us an invoice from the garage for £5,720.92 including VAT dated late May or early June 2023.

our investigator's opinion

Our investigator recommended that the complaint should be upheld. She didn't think that Accredited had done enough to demonstrate Mr H hadn't taken reasonable care. She recommended that Accredited should:

1. contact Mr H to settle the claim within the remaining policy terms and limits; and
2. award Mr H £300.00 for the distress and inconvenience caused to him.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr H and to Accredited on 18 August 2023. I summarise my findings:

I didn't find (on the balance of probabilities) that Mr H took a calculated risk or was reckless about driving through the water. So I didn't find that Accredited treated him fairly by declining his claim.

I was minded to find it fair and reasonable to direct Accredited to reimburse Mr H the amount of the invoice, £5,720.92, less the excess of £600.00, that is a balance of £5,120.92.

Subject to any further information from Mr H or from Accredited, my provisional decision was that I upheld this complaint in part. I intended to direct Accredited Insurance (Europe) Limited to pay Mr H:

1. £5,120.92 in settlement of his claim; and
2. simple interest on that amount at a yearly rate of 8% from 2 June 2023 to the date of its payment. If Accredited considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr H how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate; and
3. £300.00 for distress and inconvenience.

Mr H acknowledged receipt of the provisional decision.

Accredited disagreed with the provisional decision. It says, in summary, that:

- From a photograph, the vehicle is quite large. In order for water to enter the engine bay in the air in-take, the water would have had to come up rather high meaning that either the water was clearly deep which would have been visible to Mr H at that depth, or Mr H was driving at a high speed for the water to rise that high.
- If the water was that high, this would have been clearly visible to Mr H and if he proceeded to drive through the water, this would have been reckless.
- If this was not the case, Mr H knew that there was a body of water and despite not knowing the depth, he has carelessly driven through the water at speed, causing the water to rise up the height of the engine bay.
- Either way, it would consider this to be reckless.
- Regardless of whether it was dark, there are visible streetlights, and car lights are designed to show road signs and bodies of water, especially vehicles such as Mr H's, which are higher and gives a wider view of the road ahead.
- An online map from 2021 shows the road flooded. The image provides evidence that the road is liable to large amounts of water and Mr H would have been aware of this.

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 its final response, Accredited referred to an exclusion of any deliberate damage by Mr H. The general exclusion I've seen is wider than that. It excludes any claim from an incident resulting from something the insured had deliberately done or failed to do.

In its final response, Accredited also referred to the general conditions which Mr H had to keep to (otherwise Accredited might refuse or reduce any claim). The conditions included one that he would protect his car from loss or damage.

Notwithstanding such policy terms, I don't find it reasonable for Accredited to decline Mr H's claim unless his driving was worse than careless. After all, comprehensive policies are intended to cover the driver for the risk of carelessly damaging their own car.

I don't find it reasonable for Accredited to decline Mr H's claim unless his driving had reached the point of recklessness.

It's common ground that it had been raining heavily. I accept that Mr H should've had the benefit of local knowledge, warning signage and street lighting.

However, it was dark, and Mr H said there was a car behind him. The signage said the road was liable to flooding. It didn't say the road was closed. I accept that Mr H misjudged the depth of the water on the road.

So I don't find (on the balance of probabilities) that Mr H took a calculated risk or was reckless about driving through the water. It follows that I don't find that Accredited treated him fairly by declining his claim.

Response to the provisional decision

Accredited referred to the size of the car and inferred that either the water was visibly deep or that Mr H was driving at high speed. However, I don't consider that Accredited has provided evidence of Mr H's view from behind the steering wheel. I find it likely that, even in a larger car, Mr H mis-judged the depth of water. I don't infer that he was driving too fast.

Accredited said that Mr H would've been aware that the road was liable to flooding. However I consider that - even if he was aware of periodic flooding- he mis-judged the depth of the water.

I still don't consider that Mr H was reckless.

Putting things right

The garage invoice records the car's mileage of about 14,000. And I consider that the invoice details are consistent with repair of water damage.

So I find it fair and reasonable to direct Accredited to reimburse Mr H the amount of that invoice, £5,720.92, less the excess of £600.00, that is a balance of £5,120.92. As he will have been out of pocket since about 2 June 2023, I find it fair and reasonable to direct Accredited to add interest at our usual rate.

From what he's said, I don't think that Mr H was without the use of a car between late October 2022 and early June 2023. However, Accredited unfairly declined his claim, which must've caused him financial worry and inconvenience from having to make other arrangements to repair the car. That went on for some months. So I find it fair and reasonable to direct Accredited to pay Mr H £300.00 for distress and inconvenience.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint. I direct

Accredited Insurance (Europe) Limited to pay Mr H:

1. £5,120.92 in settlement of his claim; and
2. simple interest on that amount at a yearly rate of 8% from 2 June 2023 to the date of its payment. If Accredited considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr H how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate; and
3. £300.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 September 2023.

Christopher Gilbert

Ombudsman