

The complaint

Mr S complains that he had to pay his excess under a motor insurance policy with One Insurance Limited ("One").

What happened

Mr S had a motor insurance policy with One covering his car.

He was involved in a collision with a third party. The third party may have stolen the other car, or they may have been insured to drive it.

Mr S made a claim from One and his car was repaired. As part of the claims process, Mr S paid his excess.

Mr S complained that he had to pay his excess. He says if the third party was insured then they'd be at fault for the collision, so he shouldn't have to pay his excess. Or, if the car had been stolen by the third party, then it would be uninsured and subject to the 'Uninsured Driver Promise' in his policy wording.

One said it thought it had applied its policy terms correctly.

Mr S remained unhappy and brought his complaint to this service.

Our investigator looked into Mr S's complaint and thought it wouldn't be upheld. Mr S clarified that he only wanted this service to review the part about his excess. He points out that both the driver being uninsured or insured and at-fault would lead to the same result. So he didn't agree he should have to pay his excess.

Because Mr S didn't agree with the view, his complaint has been passed to me for a final 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'm not going to uphold Mr S's complaint and I'll explain why.

In Mr S's case, there are two situations I need to consider. The first is when a third party is driving and is insured:

Under the terms of his insurance policy with One, the main section dealing with excesses says:

"Excesses that apply

If your policy or schedule shows that you have an excess, you must pay the first part of any claim as follows:

- *A policy excess applies to your policy, of which the details are mentioned on your schedule.*
- *If you have agreed one, a voluntary excess applies in addition to the policy excess of which the details can also be found on your schedule.*
- *You are responsible for all excess payments including where a named driver under the policy was driving the vehicle. If this amount is paid in error by us you must refund the amount immediately on request.”*

These terms state that Mr S's excess is always payable. Terms like these are commonly used in the industry and I think its use here is fair.

What this means in a situation like that described by Mr S when he's suffered damage after being hit by an insured third-party driver is that he is required to pay his excess to his insurer. The insurer pays for the repairs to his car and then seeks to recover the money from the third party.

When it successfully completes its recovery of money then it can refund its policyholder if its terms and conditions allow. But because Mr S agreed to pay the excess as part of the claim, he isn't entitled to have that money back until One completes its recovery. He's effectively the final party to receive payment.

If the third party is found not at 100% fault, or the money isn't recovered, then it's my understanding that Mr S would not receive his excess back.

But I think the policy wording is clear that he will need to pay his excess.

The second situation is slightly different. It relates to a part of the wording dealing with the situation when the third party isn't insured (I've edited this for ease):

“Uninsured Driver Promise

If you have comprehensive cover and you make a claim where the driver of the other car involved in the accident is found to be uninsured, we'll refund any excess paid and your no claim discount will be restored.

This is as long as:

- *We can establish that you were not at fault in any way.*

When you first claim you may have to pay your excess and your NCD may be affected but once we have established that you were not at fault in any way and the driver of the other car was uninsured your excess will be refunded and your NCD will be restored.”

In this situation, One's policy wording makes it clear that the third party must again be 100% at fault for the incident. But because recovering its money may be more problematic for One, it makes the promise that it will refund Mr S's excess and restore his No Claims Discount.

It clearly says the excess must be paid, because it refers to making a refund.

So, in either of the situations concerning Mr S, he will need to pay his excess under the terms of his policy. Whether he then receives a refund of it depends on the factors I mention above.

It's important I say that this service provides informal dispute resolution. We're not the regulator and don't have the powers to force companies to change their policy terms – that ability sits with the regulator which is the Financial Conduct Authority. Should Mr S wish to take this further he is free to contact that body.

But I think the terms and conditions of his policy are clear, fair and applied widely across the industry. I think it's fair I say Mr S had time to examine them and cancel his policy if he wasn't happy with the cover provided.

I think One has acted fairly and in line with its terms and conditions, so I'm not upholding Mr S's complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 December 2023.

Richard Sowden
Ombudsman