

The complaint

Mr M complains about ARAG Allgemeine Versicherungs-Aktiengesellschaft ("ARAG") and their failure to provide him with a replacement car following his involvement in a road traffic accident.

What happened

On 15 December 2022, Mr M contacted the administrator of his motor insurance policy, who I'll refer to as "B", to make them aware of his involvement in a road traffic accident. Due to Mr M's description of the accident circumstances, B initially took the decision to refer Mr M's claim to a third-party company on a non-fault basis. But the third-party insurer refused to deal with the claim on this basis and so, the claim was referred back to B and the underwriter of Mr M's motor insurance policy, who I'll refer to as "C".

By 22 December, Mr M still hadn't been provided with a replacement car while his own car was awaiting inspection. So, he contacted B to ask for one to be provided. In this call, B confirmed that Mr M held Guaranteed Replacement Car ("GRC") cover, which was underwritten by ARAG. But B, who were acting on ARAG's behalf, stated this cover couldn't be used until C confirmed they wouldn't provide a courtesy car themselves. Mr M was unhappy about this, so he raised a complaint.

Mr M was unhappy that he paid an additional premium for the GRC cover but wasn't able to use it initially. He didn't think it was reasonable that he'd been left without a replacement car for 21 days and so, he wanted to be compensated for the upset and inconvenience this caused him.

ARAG responded to the complaint and initially didn't uphold it. They thought the delay in providing Mr M with a replacement car through his GRC cover was caused by delays C were responsible for, that they couldn't control. So initially, they didn't think they needed to do anything more. But ARAG reviewed this response a few weeks later and offered to pay Mr M £50 to compensate him for the calls he'd made to them, and any inconvenience he'd been caused. Mr M remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it. They thought the GRC cover terms and conditions stated Mr M should've been provided with a replacement car for up to 28 days, irrespective of the delays in C's decision as his actual motor insurer. So, our investigator thought Mr M had been without a replacement car for 20 days that ARAG were responsible for and he recommended ARAG pay Mr M £100 per day loss of use, totalling £200, on top of the £50 already paid.

ARAG agreed with this recommendation. But Mr M didn't. He didn't think the £200 was enough to reflect the inconvenience he and his family were caused by him being without a replacement car, especially over the Christmas period. And he didn't think it was enough to act as a deterrent for ARAG to act better in future claims. So, Mr M suggested a compensatory payment of £2,000, based on £100 a day, as being more appropriate. As Mr M didn't agree, the complaint has been passed 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'm upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I explain why I've reached my decision, I think it would be useful for me to explain what I've been able to consider, and why. I understand Mr M has raised a separate complaint with C, the insurer of his motor insurance policy. As this complaint is about a separate insurer altogether, I won't be commenting on the actions of C. Or holding ARAG responsible for them. I must also make it clear that my role, and the role of our service, is to act as an impartial and independent third-party when considering any complaint. It is not our role to punish a business such as ARAG, this would be the role of the industry regulator, the Financial Conduct Authority. So, any award or direction I make is intended solely to recognise the impact on Mr M. It is not to act as a deterrent for ARAG, or the industry as a whole.

I note ARAG accepted our investigator's recommendation that they should pay Mr M a further £200 to recognise that Mr M was without a replacement car when he was entitled to one under the cover they provided. As ARAG accepted this recommendation, I think it's reasonable for me to assume that ARAG have accepted their failure here. So, I don't intend to discuss the merits of the complaint in any significant detail.

But for completeness, I want to reassure both ARAG and Mr M that I have read through the policy documentation. And I've seen the GRC cover terms and conditions explain that *"A replacement vehicle will be provided until the earliest of (i) the date of completion of any necessary repairs to the insured vehicle, (ii) the date on which any hire vehicle is offered to you or (iii) the date on which any courtesy car is made available to you by any person, firm or company responsible for carrying out or paying for any repairs to the insured vehicle"*.

So, I think these terms and conditions make it clear that Mr M should've been eligible for a replacement car up until a hire car was offered through the third-party company instructed initially, or up until C decided to provide Mr M with a courtesy car. Instead, Mr M was told he would need to wait until those options had been exhausted, which I don't think fell in line with the terms of the cover he held. So, I do think Mr M should've been provided with a replacement car sooner and because of this, I'm satisfied ARAG acted unfairly here. As I think ARAG acted unfairly, I've then thought about what I think ARAG should do to put things right which I'm aware is now the main point that remains in dispute.

Putting things right

Any award or direction I make is intended to place Mr M back in the position he would've been in, had ARAG acted fairly in the first place.

In this situation, had ARAG acted fairly, I think they would've looked to arrange a replacement car for Mr M as soon as he notified them about the claim and the fact he was without access to his damaged car. I note this notification occurred on 15 December 2022. And that by not doing so, Mr M was without use of a driveable car.

I don't think it would be realistic to expect ARAG to source a replacement car the same day but I do think they should've acted in a way that gave them a reasonable chance of providing

a car the following day. And I note Mr M didn't receive a replacement car until 4 January 2023, some 20 days later.

So, I do think Mr M was without access to a car for 20 days when he shouldn't have been, had ARAG acted fairly. And so, I think Mr M should be compensated for this, to recognise the inconvenience this caused.

In situations such as this, standard industry approach is for an insurer to compensate a customer £10 per day for each day they are without access to a car when they shouldn't have been. So, when following this approach, a total compensatory payment of £200 is calculated and I note this is what our investigator recommended ARAG pay, on top of the £50 already paid in March 2023.

And having considered this recommendation, I'm satisfied it falls in line with our service's approach and what I would've directed, had it not already been made. As I've already explained, this payment falls in line with standard industry approach for loss of use compensatory payments. And this approach is based around industry guidelines set by the industry regulator. So, I'm satisfied this payment compensates Mr M for his lack of access to a replacement car, and the £50 compensates him for any emotional impact he felt. While I do recognise his family may have been impacted in providing alternative transportation, particularly over the festive period, our service is only able to consider, and compensate for, impact directly to the main policyholder and customer of ARAG. So, the additional payment of £200 is one I am directing ARAG to pay.

I understand this isn't the outcome Mr M was hoping for and falls some way short of his financial expectations. But I want to reiterate again it's not our services role to punish a business such as ARAG. And so, we wouldn't expect ARAG to pay Mr M a compensatory amount calculated on what ARAG may or may not have been charged providing a car on a credit hire basis. Instead, as a car wasn't provided and so costs weren't incurred by ARAG, we'd expect them to compensate Mr M for his loss of use, and the inconvenience he experienced solely. And I think an additional payment of £200 fairly does so on this occasion.

My final decision

For the reasons outlined above, I uphold Mr M's complaint about ARAG Allgemeine Versicherungs-Aktiengesellschaft and I direct them to take the following action:

- Pay Mr M an additional amount of £200 to recognise the impact of not being provided a replacement car had.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 August 2023.

Josh Haskey
Ombudsman