

The complaint

Mrs R complains about how First Central Underwriting Limited handled a claim made on her motor insurance policy and that it declined it. She wants substantial compensation for her trouble and upset and for the claim to be paid, with interest.

What happened

Mrs R left her car with a valet parking company whilst she travelled abroad. When she returned two weeks later, she found the car had water damage. Mrs R made a claim on her policy. First Central instructed an independent engineer to inspect the car. He said the car had flood damage and was beyond economical repair. There was then a delay in the claim before First Central offered Mrs R a total loss settlement and it offered Mrs R £150 compensation for this delay, which she declined.

The car was recovered to storage. First Central's in-house engineer then said the car had undeclared modifications. First Central initially voided the policy and declined the claim because of this. But, six months later, and after the complaint came to us, First Central decided that Mrs R wouldn't have been aware of these modifications, and it reinstated and cancelled the policy from the date the car was declared a total loss. It paid Mrs R £450 compensation for the trouble and upset caused and it said Mrs R need not declare the cancellation.

A month later, First Central told Mrs R that it had declined the claim as the water damage was caused by a common mechanical fault with her make and model of car. It said this was excluded from cover. Mrs R was unhappy with this change of decision, that she had been without her car for over a year, with the delays in the claim, with the effect this had on her No Claims Discount (NCD) and the trouble she had in obtaining alternative cover.

our investigator's view

Our Investigator recommended that the complaint should be upheld in part. He thought First Central had reasonably decided to decline the claim based on the engineering evidence available. But he thought First Central had caused Mrs R avoidable trouble and upset due to the delays in the claim and the loss of expectation. He thought First Central should increase its offers of compensation for this to a total of £750.

First Central agreed to do this. But Mrs R remained unhappy that her claim had been declined.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mrs R and to First Central on 30 April 2024. I summarise my findings:

Mrs R had told us about the effect not having a car and not being able to hire one on occasions has had on her. I could understand that the delays in the claim journey and the ultimate decline of her claim had caused her stress and frustration. And I was sorry to hear about this.

Since Mrs R's complaint had been with us, First Central had decided to reinstate and cancel her policy from the date her car was declared a total loss. It said Mrs R wouldn't have known

that her car had modifications, and so she didn't make a misrepresentation when she didn't disclose them. I thought that was fair and reasonable, so I didn't consider this further.

I then considered First Central's decision to decline the claim due to mechanical failure. I noted that First Central had given its consent for us to consider this as part of this complaint although it made its decision after it sent Mrs R its responses to her earlier complaints.

Our approach in cases like this is to consider whether the insurer's acted in line with the terms and conditions of the policy and fairly and reasonably.

First Central relied on an exclusion from cover to decline the claim. This is stated on page 15 of the policy booklet under "What is not covered under Sections 1 and 2":

"Wear and tear, loss in value, electronic, electrical, mechanical or computer breakdowns, breakages or failures."

This is a common exclusion in motor insurance policies, and I thought it was reasonable for First Central to rely on it. First Central relied on its inhouse engineer's opinion to decline the claim.

First Central's engineer said that, from his experience, cars of the same make and model as Mrs R's had a "*common mechanical defect and the convertible roofs are susceptible to the roofs leaking*". He provided links to various online forums and help sites to support his opinion. He also said he decided this because of "*...the fact that the vehicle has no damage to it at all.*" From what I could see, he relied on photographs of the car and the claim notification call to decide this and he didn't make a physical inspection of the car.

We're not engineers. We don't assess whether or how damage to a vehicle would be caused as this is a matter for the experts in these situations, the insurance companies and engineers. Our role in these complaints is to determine whether an insurance company has considered all the available evidence and whether it can justify its decision about a claim.

And on this occasion I wasn't satisfied that First Central had justified its decision. I explained why I thought this.

Mrs R had reported that there were no leaks before she went abroad. I noted that she parked her car in a garage overnight, but it must have been exposed to rain at some times and she hadn't noticed any leaks. She had had the car for six months and it was still under the dealer's warranty, so she could have had this addressed if there had been any problems. But now water had got into the car, filled the footwells and stopped the electrics from working. It seemed an unlikely coincidence that this occurred in the two weeks that Mrs R was abroad.

From First Central's notes, it thought from the start that the car hadn't been immersed in water. But it thought it was likely that rain had somehow got into the car whilst in the care of the parking company.

Mrs R thought the company had accepted this as First Central had told her a third party had been in contact. But First Central explained that this was an error due to the wrong form being sent to Mrs R. And I couldn't see that the company had contacted First Central.

The in-house engineer said that the roof leaking was a common fault in Mrs R's type of car. The engineer said there was no damage to the roof, and it was fully operational. But he didn't inspect the car to identify the source of the leak or look for any evidence to show that this was the source of the water damage.

The car had been in First Central's care for many months and its agents could easily have done this. And Mrs R said First Central had declined her request for an inspection of the car. And, more than a year after the claim, I thought it was too late now for an inspection to be carried out.

First Central's in-house engineer had also reviewed the claim earlier and decided that it should be rejected due to the car's undisclosed modifications. But he didn't then comment on the leak or on the mechanical fault in these cars.

The car had been physically inspected by an independent engineer a month after Mrs R made her claim. He stated that the car had "been subject to flood damage". He didn't state how this had happened, but he indicated that the water entry may have been at the top of the windscreen. He didn't state that a leaking roof was common with these cars. But he recommended a total loss settlement which I thought implied that he didn't think there had been a mechanical fault that would be excluded from cover.

He said the electrics, carpet and insulation would need replacing, and also the front bumper. He said the car's condition was "good" and didn't mention any damage to the seats. But the forums referred to by the in-house engineer all pointed to leaks from the roof onto the seats leading to staining. If the roof had leaked, then I'd expect this to have been reported by the independent engineer. But he didn't see this.

So whilst I didn't doubt that the mechanical fault may be common in these cars, I hadn't seen that First Central established that Mrs R's car had this specific fault. I thought it had relied on a speculation that wasn't supported by any specific physical evidence. And I didn't think it has reasonably discounted Mrs R's belief that the damage was caused by the parking company's actions.

And so I didn't think First Central had reasonably justified its decision that the water damage was caused by a mechanical fault. And I wasn't satisfied it was fair or reasonable for First Central to decline Mrs R's claim because of the policy exclusion. First Central had accepted the claim and offered a total loss settlement. So I thought it should now settle Mrs R's claim on this basis.

From what I could understand, this would be a fault claim as First Central is unable to recover its outlay from another party. And so there will be an effect on Mrs R's NCD, in keeping with the policy's terms and conditions. And, as the policy has been used, the full premium would be payable in full on cancellation.

I could see it wasn't Mrs R's decision to cancel the policy. Because of this she was denied the opportunity to add another car to the policy for the remainder of the policy year. But I didn't think it was fair or reasonable for First Central to waive its request for reimbursement of premium it paid Mrs R earlier as Mrs R had benefited from having the avoidance removed.

Mrs R accepted the total loss settlement First Central offered her, albeit reluctantly. And she had been without her money for some time. So I thought First Central should now add interest to this settlement from the date Mrs R accepted its offer until the date of payment.

First Central took Mrs R's car into storage. I could see that it asked Mrs R to remove the car when it declined her claim, but she didn't do this. And it was now seeking to recover storage charges from Mrs R. I could see that Mrs R had objected to this and First Central hadn't provided a final response to this specific point. But I thought it had had sufficient time and notice to do this, and the charges were due to the declined claim, and so I considered this to avoid further frustration and distress for Mrs R.

It wasn't Mrs R's decision for the car to be taken to storage. I thought that but for First Central's unfair decision to decline the claim, First Central would have taken ownership and disposed of the car. So I didn't think it was fair or reasonable for First Central to hold Mrs R responsible for the storage charges. And so I thought it, and its agents, should stop pursuing her for these.

First Central had accepted that there had been significant avoidable delays and errors in the claim. It had agreed to pay Mrs R a total of £750 compensation for the trouble and upset this caused her. But I didn't think this went far enough in Mrs R's circumstances.

Mrs R was deprived of her car and a settlement which should have been made when she accepted First Central's offer. This was delayed due to case handling issues. She had then endured stress and frustration as she was thought not to have disclosed the car's modifications. And then she suffered further upset when her claim was unfairly declined. So she was twice deprived of her expectations. And she was humiliated when her new policy for a replacement car was cancelled because of the open claim.

I thought First Central's mistakes had caused Mrs R substantial distress, upset, worry and humiliation with the impact felt over a year. So, in keeping with our published guidance, I thought £1,000 compensation was warranted for this level of impact. And I thought First Central should increase its compensation offer to £1,000 in total. From what I could see, it had already paid Mrs R £450, so it should now pay her a further £550 compensation.

Subject to any further representations from Mrs R and First Central, my provisional decision was that I intended to uphold this complaint.

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.

First Central replied that it accepted my provisional decision. Mrs R replied that First Central had disposed of her car and so deprived her of an opportunity to gain evidence from an independent inspection. Mrs R also said First Central hadn't provided her with a breakdown after it disposed of her car. But I don't think this is now relevant as First Central has agreed to settle her claim for her car's total loss and so it would be entitled to dispose of her car. So I can see no reason to change my provisional decision.

Putting things right

I require First Central Underwriting Limited to do the following:

1. Settle Mrs R's claim for the total loss of her car, adding interest to this settlement at the rate of 8% simple per annum from the date Mrs R accepted its offer until the date of payment†.
2. Cease pursuing Mrs R for payment of storage charges for the car.
3. Pay Mrs R £550 further compensation (£1,000 in total) for the distress and inconvenience caused by its handling of her claim.

†If First Central considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs R how much it's taken off. It should also give Mrs R a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require First Central Underwriting Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 19 June 2024.

Phillip Berechree
Ombudsman