

The complaint

Following an incident Mr W complains Acromas Insurance Company Limited have settled a claim on his motor insurance policy as a 50 / 50 liability which he doesn't think is fair.

Ms C is a named driver, and was driving the car at the time, so I've also referred to her in this decision.

Other companies have been involved in this complaint, but as Acromas are responsible for it I've just referred to them in this decision.

What happened

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant elements of this below, and they form part of this final decision.

In November 2020 Ms C was unfortunately involved in an incident where she says another car reversed into her. She got a witness' details, spoke to a bus driver who told her about CCTV on the bus, and then spoke to the other driver. Ms C says the other driver was very unpleasant, and immediately said she was going to tell her insurance company Ms C had driven into her. Ms C said the other driver was walking around with no apparent signs of injury.

After speaking to the other driver, Ms C drove home, called Acromas to report what'd happened, and then called the bus station to ask about the CCTV. She wasn't able to get it, so called Acromas back and asked them to do so.

In December 2020, Mr W and Ms C were told the other party had made a personal injury claim – something Ms C strongly disputed.

In April 2021 after investigating things, Acromas decided to settle the claim on a 50 / 50 liability split. They explained the damage only tells a set of circumstances, not how things actually happened. They said regarding witness statements they'd been trying to get them but couldn't, and it's not appropriate for them to badger witness'. They said they'd been proactive in contacting the bus company, and it was only after this repeated contact they found out the bus in question had been sold. They summed up by saying they'd taken this decision based on their experience of day to day claim handling – and if they went to litigation the judge would want to see some kind of evidence to prove one parties version of events, which they simply didn't have.

Mr W and Ms C got in touch with us, asking us to look into things, and explaining they felt Acromas should get the CCTV from the bus and a witness statement from the driver. They also felt it was unreasonable that due to Acromas' delays the bus company sold the bus before the CCTV could be obtained and were concerned at the claim status affecting future policies.

In response to the complaint we raised for Mr W and Ms C, Acromas added it'd been eight times they'd contacted the bus company – and that they'd got one witness statement, but the car descriptions were wrong so couldn't use it. And they'd been asked not to contact the

witness again, which they had to respect. They felt they'd done all they could, including appointing a field investigator, and a 50 / 50 liability was the best possible settlement in the circumstances.

Unhappy with this Mr W and Ms C asked us to look into things. One of our Investigators did so. She spoke to the bus company in June 2021, who explained they'd no longer have the footage. And, having spoken to the bus driver in question, he remembered an incident between two cars but because of the length of time that'd passed he couldn't remember any details – so he didn't feel comfortable giving a statement.

Our Investigator felt Acromas had reached a decision regarding liability fairly, so she didn't uphold the complaint.

Mr W replied and explained given all the evidence he didn't accept a 50 / 50 split. He also felt our Investigator was calling Ms C a liar – so the case has been passed to me to decide.

Before being able to finalise my thoughts, Ms C let us know the other party was taking Acromas to court. We asked Acromas about this, and they explained they had limited information as it was being handled by their solicitors, but it does look like the matter is going to court.

What I've provisionally 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.

I think it's important to explain I can't decide if the other party is responsible for the incident or not. That can only be decided by a court – and this appears to be happening. My remit is limited to determining whether Acromas have acted fairly and reasonably in deciding to settle this incident on a 50 / 50 liability basis as they did originally.

I also think it's important to explain I've read and taken into account all of the information provided by both parties, in reaching my decision. If I've not reflected something that's been said in this decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless it's relevant to the crux of the complaint.

Policy terms

In Mr W and Ms C's situation, the first step is for me to consider whether the policy terms allow Acromas to decide how to settle the claim. On this point, the terms say:

"If we wish we may take over and deal with your claim in your name."

This is a standard term in motor insurance policies, so I'm satisfied Acromas were allowed to decide whether to pursue the matter or not.

Evidence – bus CCTV and witness statement from the driver

When Ms C first reported the incident, she asked Acromas to get the CCTV – and says because they didn't attempt this for some time that's caused the evidence to be lost.

I've seen that Acromas did try and get the CCTV, and the bus drivers' statement, on 9 December 2020 – which is a week after they'd heard from the other insurer was saying Ms C was liable.

Although I know Mr W and Ms C don't agree, I don't think that's an unreasonable amount of time. It's subsequently come to light the bus company keeps CCTV for around a month – and Acromas made another effort to get the CCTV on 16 December, along with the driver's statement. So, I can't say Acromas' efforts meant they were never going to get the CCTV.

But, I do think it's relatively common for CCTV to be deleted after around a month or so. With that in mind, and before the month was up with the bus company not having replied to two emails, I think Acromas could have been more proactive. They could, for example, have called the bus company to try and get this information.

Instead, I can see further emails being sent to the same email address at the end of December, and through January and February. In April 2021, after the field investigator's report, they sent another email – which also didn't get a reply.

In June 2021 our Investigator called the bus company. And, after a bit of investigative work, was able to speak to the relevant people. She confirmed the CCTV footage was no longer available. And, although the bus driver remembered an accident, it was so long ago he didn't feel comfortable giving a statement anymore.

This suggests to me that, it's possible, had Acromas been more proactive, they'd have got more evidence to support Ms C's version of events – the CCTV, and potentially a statement from the bus driver when he could remember what'd happened. I think that's important because of the next section.

Evidence – witness statement from other party

There was another witness to the accident aside from the bus driver. He was asked to complete a questionnaire to report what he'd seen and return it to Acromas.

He did so, and what he said was exactly what Ms C had reported – bar the make of one of the cars. Acromas have said this means his statement wouldn't stand up in court. I've noted though the field investigator felt this wasn't a barrier, because the witness' statement aside from this was essentially exactly what Ms C had reported – that the other driver reversed into her.

Acromas haven't explained why they didn't pursue this matter – as suggested by their field investigator. And I can't make them pursue the matter – even if the matter doesn't end up in court. But I do think their actions in trying to secure evidence from the bus company, combined with this, mean they've not treated Mr W and Ms C fairly.

Summary

I don't think Acromas have acted fairly when handling this claim. I think they could have been more proactive in trying to get evidence, and had they done so, I think it's at least possible they'd have felt they could dispute liability further and take the matter to court.

As I've set out above, I can't decide this, or make Acromas take further action regarding this.

Our Investigator picked up the phone and resolved in a matter of days what the position was with the bus company's evidence – which Acromas had failed to do in many months. Given that, I think had they been more proactive, this would have lessened Mr W and Ms C's feeling of injustice about this whole situation. I think £300 is appropriate in the circumstances. As Ms C is acting as a representative, and hasn't formally joined to the complaint, I can only direct Acromas make this payment to Mr W.

Responses to my provisional decision

Acromas replied and said they thought it unfair to partially uphold this complaint against them because they actively tried to get the CCTV by calling the bus station – who told them to put the request in writing – which is what they did. They said if the bus station doesn't want to provide information, they can't force them to do so. They added regarding the witness statement the other insurer wouldn't have considered it credible due to the incorrect information. Acromas added a witness' family member asked them to stop contact – so they couldn't have used the witness anyway.

Mr W said he'd noted the payment of £300 but said it's a small amount compared to what he and Ms C have suffered. He said he's still waiting for his excess payment of £400 to be returned – and he's glad it's been acknowledged Ms C has been telling the truth about what happened. Mr W also said he noted there's no mention in my letter of how quickly Ms C contacted Acromas, the bus company and the Police to report what the other driver had said – namely they were going to make a fraudulent claim. Mr W said he couldn't understand why there was any delay in Acromas trying to get the bus footage, said it's a shame this matter has been allowed to drag on for so long, and is at a complete loss as to why a 50 / 50 liability decision was made.

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.

I've noted Acromas' comment that they did try and proactively get the bus CCTV footage. I don't recall seeing that in the evidence I've been provided – but even if they did, I'm not sure I can say they did enough. I say that because our Investigator managed to do this fairly promptly when looking into the case – and managed to get answers on the phone to the issues at hand. It seems reasonable for me to say if Acromas had handled things properly (whether that's by phone or email) they'd have been able to resolve this issue.

I've also seen what Acromas have said about the witness' statement, and that the other insurer wouldn't have deemed it credible. But this isn't what their field investigator said. They clearly said the statement was credible, as it directly supported what Ms C had said during the course of the claim. So, I can't agree it wasn't appropriate to at least share it and see what the other insurer would say.

I've noted all of Mr W's comments, but I think it's important to remind him I'm not deciding liability. So, I've not decided whether Ms C is or isn't telling the truth – I'm simply stating the evidence I've seen could back up what she's said happened. I have talked about Ms C's actions following the incident, although I didn't mention her calling the Police. That's because I'm focusing on the actions of Acromas, and whether they've acted fairly.

As I mentioned before, it seems liability is going to be decided by a court. And that'll cover the excess Mr W has mentioned – as I could only tell Acromas to refund that, if I decided liability – which I can't.

But, I do still think Acromas haven't shown they've done enough to properly look into matters in a proactive way. And, I remain of the opinion had they done so it'd have lessened the impact to Mr W, and Ms C. So, I still think £300 is a fair outcome to resolve this complaint, for the issues I can consider.

My final decision

I partially uphold the complaint and require Acromas Insurance Company Limited to pay Mr W £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 March 2022.

Jon Pearce
Ombudsman