

## **The complaint**

A company, which I'll refer to as L, complains about Society of Lloyd's handling of a motor claim under its fleet insurance policy. Any reference to Society of Lloyd's (SOL) in this decision includes the underwriting syndicate at SOL that underwrites L's policy.

Mrs G, who is a director of L, brings the complaint on L's behalf. Any reference to L in this decision includes all representatives acting on its behalf.

## **What happened**

L took out a fleet insurance policy. In February 2020 L's vehicle was involved in a road traffic accident involving two other parties.

Upon receiving notification of the claim from the third-party insurer and receiving L's claim form, SOL asked L for a more detailed statement from its driver on what happened. SOL also contacted the police to request a copy of the statement from the officers that attended the accident scene.

L explained the driver of the vehicle has learning difficulties and therefore it took a statement from the driver over the phone and provided it to SOL.

In the statement, L's driver said that as he came round the corner, he saw that a collision had already taken place. He said the road surface was slippery due to black ice and the road had not been gritted by the Local Authority. As he was passing, he clipped a third-party vehicle approaching from the opposite direction which he believes to be an off-duty police officer. The third-party vehicle then hit another car, third-party two. L's driver said the police that attended the accident scene confirmed fault could not be established because of the icy road surface which was caused by a damaged drain which had iced over. L's driver also said the contact was very minimal and repair to the vehicle was arranged.

SOL received a response from the police saying that only an abstract report was available. The report confirmed that police attended the scene of the accident and didn't mention liability. A full police report was requested however SOL didn't receive a response.

SOL said third-party one and two both said in their statement that L's driver lost control of the vehicle and made contact with third-party one, which was approaching from the opposite direction. Third-party two was travelling behind L's vehicle and swerved to avoid the incident but ended up colliding with third-party one.

The third-party insurer threatened to commence legal proceedings as it held L's driver at fault for the accident. SOL wrote to L's representative on 24 December explaining that the evidence points to L's driver losing control of his vehicle on an icy surface. SOL said in the letter that unless it heard back from L by 4 January it would settle on this basis. As SOL didn't hear back from L, they proceeded to settle the claim based on the evidence they had.

L said that its representative's office was closed when SOL wrote to it on 24 December and by the time it saw the correspondence from SOL and responded on 9 January, the claim had

already been settled.

L disputes liability and says the accident took place with no blame. L says it was unaware that liability had been accepted by SOL and only found this out when it received its annual claims experience. L believes its driver was not responsible for the damage caused to the third-party vehicle. L would like its claims experience to be rectified and no claims discount to be reinstated.

Our investigator upheld L's complaint in part. He thought SOL was entitled by the policy terms and conditions to settle the claim as they saw fit. He said that SOL had been fair and reasonable in recording the incident as a fault claim given that there was some contact made with the third-party vehicle and lack of evidence to support L's driver's version of events.

The investigator did however say that SOL could have handled the investigation of the claim better, in particular when getting a statement from L's driver. L's driver was unable to provide a written statement because of his learning difficulties. The investigator thought it would have been better for SOL to send a claims investigator in person to take a statement and read it back to the driver. He said this may have cleared up some of the discrepancies in the evidence such as the third-party driver being an off-duty police officer and clarification on which vehicle the driver was saying lost control on the black ice. Although he said this wouldn't have changed the outcome of how liability was settled, he felt that SOL should pay L £150 compensation for poor customer service during the investigation of the claim.

SOL accepted the investigator's view to pay £150 compensation given that the matter had been ongoing for some time and to avoid further delay.

L didn't agree with the investigator's findings or to the offer of £150 compensation and so the complaint has been passed to me for 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.

I want to assure L that I've read and carefully considered everything that it has said. However, my findings focus on what I consider to be the central issues, and not all the points raised. The purpose of my decision isn't to address every single point that the parties have raised. My role is to consider the evidence presented by L, and SOL, to reach what I think is a fair and reasonable decision based on the facts of the case.

Whilst L clearly didn't agree with SOL's decision on settling the claim, what it is also disputing is that the claim is recorded as a fault claim which has an impact on future premiums for L.

This is clearly a matter of great principle to L and I fully understand L is dissatisfied with the way SOL has settled the claim when it believed that its driver wasn't responsible for the damage caused to the third-party vehicle.

It isn't our role to decide who was responsible for causing the accident. This is the role of the courts. Instead, our role in complaints of this nature is to investigate how the insurer made the decision to settle the claim. Did they act fairly and reasonably and in line with the terms and conditions of the policy?

In the terms and conditions of L's policy, SOL's ability to determine liability is included under the heading "Claim requirements – rights and obligations". Here it says, in summary

SOL has total control to conduct, defend and settle any claim.

So, SOL is entitled, under the terms and conditions of their policy with L, to take over, defend, or settle a claim as they see fit. And this means SOL can settle the claim as they feel appropriate irrespective of what L said and whether it agreed with the outcome or not. So while I understand why L feels that SOL didn't give it enough time to respond to their letter dated 24 December, it doesn't change the fact that ultimately SOL had full discretion in how to settle the claim. That means it doesn't require L's knowledge or consent to decide how to settle a claim. This is a common term in motor insurance policies, and I don't find it unusual. And I think it's a reasonable term, as ultimately SOL will have to pay any settlement, so they should be able to decide how to settle.

This having been said, I would still expect SOL to act reasonably when relying on this term and properly consider the matter before proposing a settlement.

L's driver said in his statement that there had already been a collision and as he approached, he was then clipped by an oncoming vehicle, third-party one. He therefore believes there was already damage to the vehicle before he made contact with it. The statement from third-party one and two don't mention a prior incident. There was also no independent witnesses or CCTV evidence. I therefore think SOL was reasonable in saying that there is insufficient evidence to support L's driver's version of events.

I also note there is inconsistency in the information L and its driver gave during the investigation of this complaint. L told our service in an email correspondence on 9 August 2021 that only the wing mirrors came into contact, but when our investigator spoke to L's driver on the phone, he said the bumpers tapped. Also, in L's complaint letter to our service it said there was no damage to its vehicle but, I note that the driver's statement said that repair for damage to L's vehicle had been arranged. I'm therefore satisfied that there must have been contact for damage to occur and I don't think the driver would have said the damage was repaired if it hadn't.

I do agree with the investigator that in the circumstances SOL should have taken more care to gather accurate information from L's driver in person. But having said that I don't think it would have changed the outcome of how liability would have been settled. I say this because the evidence that SOL had to consider was the two third parties' versions of events and photographs of the damage on the third-party's vehicle. The two third parties gave a similar statement on what happened and that pointed to L's driver losing control; of his vehicle which made contact with third-party one and as a direct result caused third-party one and two to also collide. Although L's driver's statement is vague, I feel that it supports this too, but he does also say there was already an accident before he approached. However, there were no independent witnesses or CCTV footage of what had occurred.

SOL said that due to the lack of evidence to demonstrate that L's driver was not at fault and taking into account the legal costs and expenses for allowing the matter to proceed to litigation, they took the view that it would be difficult to demonstrate in court that L's driver was not at any fault and therefore it settled the claim fairly. Under the circumstances I think it was reasonable for SOL to reach this conclusion.

I'm satisfied SOL acted in line with L's policy terms and conditions and took into account the available evidence when they made their decision to settle the claim. I think this was a reasonable decision in the circumstances and I don't require SOL to change it.

L says that as result of SOL conceding liability for a claim which its driver had no involvement in, L was unable to obtain a more competitive quote at renewal or source an alternative provider. When an insurer is notified of a claim, they are required to record it on

the Claims Underwriting Exchange Database (CUE). The CUE database must be an accurate reflection of what's happened, and I'm satisfied that SOL have correctly reported this incident and they are not required to delete it from the CUE database. I appreciate there is a dispute regarding the amount of damage caused, but I would expect an insurer to record such a reported incident on the CUE database. Notwithstanding the inclusion of the word "Claims" in its name, the CUE is a database that includes incidents that haven't resulted in claims too, so irrespective of the outcome the incident would still need to be recorded on the CUE database.

Overall, I think SOL could have been more thorough when investigating the claim to eliminate some of the discrepancies which resulted in delay when reviewing the claim. I therefore agree with the investigator that a compensation payment for the customer service element of this complaint is sufficient. I agree with our investigator that £150 as compensation is appropriate to recognise the inconvenience caused to L.

Although L may disagree with SOL's interpretation of the evidence and their decision to settle the claim on a fault basis, based on the evidence SOL had, I don't think they exercised their discretion unfairly or unreasonably. I therefore don't require SOL to change the way it's settled the claim or how they've recorded it on the CUE database.

### **My final decision**

For the reasons set out above, I uphold this complaint and require Society of Lloyd's to pay L the sum of £150 compensation for the inconvenience caused by its handling of L's claim.

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

Ankita Patel  
**Ombudsman**