

The complaint

Miss S has complained about her car insurer, Ageas Insurance Limited as she believes it prejudiced her chance of obtaining a settlement in a personal injury claim after she sustained injury during a road traffic accident.

What happened

Miss S was waiting in a yellow-boxed area to turn when another driver collided with her. She notified Ageas. Ageas initially marked the claim as being Miss S's fault and admitted such to the insurer for the other driver. Whilst it later sought to retract that admission, the other insurer didn't accept that.

When Miss S took action in respect of her personal injury the other driver relied on that initial acceptance as proof of Miss S's liability. The court confirmed that the initial acceptance of liability by Ageas was binding and could not be rescinded, meaning it could be relied upon by the other driver in support of their claim. The other driver won their injury claim whilst Miss S, who had made a claim for £2,700, lost and wasn't awarded anything. Miss S felt that was Ageas' fault.

Ageas accepted that it had agreed liability too early. But it had sought to retract that a few months later and then again formally as part of the injury claim. It noted though that it was by no means clear that, if the retraction had been allowed, liability for the loss could have been successfully challenged. And even if it could have been shown that Miss S wasn't liable or was only partly liable for the crash, it wasn't certain how much she might have been awarded by the court for her injury claim. Ageas said as it had been at fault for acting too quickly initially, it would reinstate the no claims discount so Miss S's claim record reflected no-fault by her and waive her £1,200 excess in full (it initially offered to waive half but increased that when Miss S raised concerns about the effect of its error on her personal injury claim). Miss S remained unhappy so she complained to us.

Our Investigator felt Ageas had acted fairly and reasonably to make up for its failure. So he didn't recommend that it do anything more.

Miss S felt that the erroneous acceptance of liability by Ageas had clearly prejudiced her personal injury claim. So she thought it should settle her injury claim in full. Her complaint was passed to me for an Ombudsman's review. I felt Ageas had failed her and it should pay her £1,350, plus interest. So I issued a provisional decision, my findings of which were:

"I appreciate that this is frustrating for Miss S. And I can see why she might think Ageas should pay her redress in-line with her injury claim. After-all Ageas accepted that it made a mistake by accepting Miss S's liability for the accident and it is clear that the injury claim was successful, for the other driver, off the back of that liability acceptance.

But that, by itself, is not enough to say Miss S lost out on her claimed amount in its entirety because of Ageas' failure. It is often the case in road traffic accidents that the issue of liability is not straightforward, and many claims result in acceptance of liability being split between the parties. So all Ageas' mistake means for certain is that a chance to defend

Miss S's liability position, and for her to be heard in court, was lost. It's by no means certain that if that chance had not been lost, Miss S/Ageas would have been successful in attaining an outcome fully in Miss S's favour.

However, it is for me to decide what most likely would have happened if that chance had not been lost. Clearly Miss S believes she was not at fault in any way. And I've no doubt that she would have expressed that view in court, given the chance. But the strength of her conviction does not mean the court would likely have found in her favour. Not least as it seems the other driver was equally of the view that they were not at fault. So a court would need to look at the available evidence to decide liability. Whilst that didn't happen, I'm aware that the solicitor involved in the case, if the court had agreed to the retraction of the liability admission, felt a settlement based on 50/50 liability should be put forwards. This indicates to me that the solicitor, with its knowledge of how court cases like this often resolve, didn't think it was likely an outcome fully in Miss S's favour could be achieved.

So I can understand why Ageas wouldn't agree to settle things in full for Miss S. And it seems that it wasn't even certain an agreement or settlement based on a 50/50 split of liability could be achieved. But that was what the solicitor involved felt was possible. And seemingly Ageas has based its redress on the likely outcome being 50/50, initially offering half of the excess sum to Miss S. I'm further mindful that a solicitor like this is usually best placed to assess what the likely outcomes and chances of achieving them are. As such I think it is fair and reasonable to say the likely outcome for Miss S's claim, if Ageas had not accepted liability in error, would have been that an agreement based on, or a finding that, Miss S and the other driver were each equally liable for the accident.

Further, given there is caselaw and set guidelines for values to award in injury claims, solicitors will often set fairly realistic claim amounts which do not usually fall entirely wide of the mark. I also bear in mind that it would have been possible for Ageas to get legal advice on the claim amount had it wanted to show that it was unlikely that Miss S would have been awarded as much as half of the sum claimed (by her solicitor) (based on liability being split 50/50). So I don't think Ageas has shown that it did offer Miss S a fair settlement when it effectively awarded her £600, about a quarter of the claimed amount, in respect of the injury claim. I think that sum equates to reasonable compensation for non-financial loss, including Miss S's loss of opportunity to be heard in court. But I think it has been shown that Miss S has had a likely financial loss caused by Ageas' failure, and that is likely in the sum of £1,350 – being half the sum of the injury claim. So I think it should pay this to her, plus interest from the date the injury claim concluded in favour of the other driver.*

In saying that I have taken into account the other redress Ageas has offered, namely in respect of how the claim has been recorded, the no claims discount and waiver of half the excess amount. The latter of which puts Miss S in the position she'd have been in if this had been settled 50/50, with half of her excess being covered by the other driver. Ageas fairly and reasonably had to do that to make up for its error. Regarding the claim record and reinstating the no claims bonus, Ageas went a step further. I say that because a strict reliance by Ageas on 50/50 being the most likely outcome in this respect would have meant the loss of the bonus and a finding of fault logged against Miss S. The amended outcome will doubtless benefit Miss S. But that doesn't mean Ageas can reasonably then overlook, or that I should disregard, Miss S's likely financial loss of the injury claim settlement. That would result in an unfair and unreasonable outcome. As I said above, I think Ageas should pay Miss S £1,350, plus interest, and that is in addition to the redress it has already provided. Miss S will then have been compensated for the upset she suffered and have been restored financially, as closely as reasonable possible, to the position she would have been in, had Ageas not erred regarding acceptance of liability, in respect of both her car and personal injury claims."*

Miss S said she accepted my findings. Ageas said it felt the £600 it had offered, to compensate for Miss S's lost opportunity, should be taken into account as part of the £1,350 – meaning it would only have £750 to pay. It reiterated that, in its view, there was no way to know what a court would have awarded.

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 note Ageas has said again that there was no way for it to know what a court may have awarded Miss S. But it is possible for expert legal opinions to be sought in this respect.

In any event, Ageas notes that using Miss S's claimed for amount as a starting point, and halving it, is a fair way forward. Ageas' issue is that the £600 already paid should then be deducted from that sum. But I'm not persuaded that would create a fair outcome. That is because the £1,350 in question represents Miss S's likely 'financial loss' incurred on account of Ageas' failure. Whereas the £600 is a compensatory amount to make up for her distress and inconvenience caused by that failure. Making Miss S whole again, financially, does not take away the fact that she lost her opportunity to have this matter aired in court and that she was upset and frustrated as a result. That is her 'non-financial loss'. This service views financial and non-financial loss separately, with redress, where applicable, being awarded in respect of each.

As such, my provisional view on the fair and reasonable redress required here has not changed. My findings remain as those stated provisionally and, with the addition of my comments here, are now the findings of this, my final decision.

Putting things right

I require Ageas to pay Miss S £1,350, plus interest* from the date the injury claim concluded until settlement is made. As noted above, this is in addition to the other redress Ageas has already provided.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs requires Ageas to take off tax from this interest. If asked, it must give Miss S a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Ageas Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 27 December 2022.

Fiona Robinson
Ombudsman