

## **The complaint**

Mr U has complained about his car insurer Watford Insurance Company Europe Limited because it declined liability to him for an injury claim from a pedestrian, then, having settled the pedestrian's claim, asked him to reimburse it over £90,000 being its outlay less his premium paid.

## **What happened**

Watford was advised in August 2019 of an incident of a car striking a pedestrian and the car was believed to have been Mr U's. Mr U spoke to Watford and denied involvement. He later agreed to be interviewed by Watford and for his car to be inspected. The inspecting engineer found no damage and Mr U was not then inclined to be interviewed.

Watford was sent CCTV footage. It asked the engineer to review his initial report on the car in light of that footage. The engineer was satisfied there was damage to the car consistent with the incident as visible in the footage. Watford told Mr U that he should have cooperated with it but that in light of the CCTV footage it would be settling the pedestrian's claim. Several months later Watford confirmed to Mr U that as he had breached the policy term to cooperate with it, it expected him to repay its costs for settling with the pedestrian. Watford told Mr U he had to pay it over £90,000 but that he could do that in instalments if he wished. Mr U didn't think that was fair and complained to us.

Our Investigator didn't think Watford had acted fairly by declining liability to Mr U or asking him to repay its outlay. She said it should stop asking him for repayment of its settlement and pay him £750 compensation.

Mr U said he was happy with the outcome. Watford said it disagreed with it. It felt it had been clear that Mr U needed to cooperate with it. And it also said it seemed unlikely, given how uncooperative Mr U had been, that even if it had told him the amounts of money at stake, that he would've done anything differently. Watford asked for an Ombudsman's 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 think Watford failed Mr U on this occasion. I think it has to confirm to Mr U that he doesn't owe it any money and pay him £750 compensation. I'll explain.

Watford knew from the outset that the pedestrian claim was likely to be costly. Its file shows it expected costs to be in excess of £25,000. That is a substantial amount of money even though it is only about a quarter of the final settlement sum.

At the outset Mr U didn't think he had hit the pedestrian. It became clear later that he likely had – Watford settled with the pedestrian on the basis that had happened and Mr U faced criminal proceedings in that respect. But all of that happened subsequent to the period when Watford was trying to discuss the claim with Mr U.

I'd stress that most policies of insurance require the policyholder to cooperate with the insurer's reasonable enquires. And this service will often support an insurer endeavouring to complete such. But I can understand why Mr U in 2019 felt that Watford's enquiries were unreasonable – because he believed he hadn't hit the pedestrian and this belief was supported by the initial findings of Watford's engineer, which Mr U was made aware of. Whilst I know that Watford did tell Mr U about the CCTV evidence received, which it felt showed his involvement, it never updated him regarding the change of view of the engineer.

Further, whilst Watford told Mr C that it may decline liability to him for the claim, even whilst settling with the pedestrian, it never told Mr U what that might mean. Not until after it had made its decision. I think if it had told Mr U that would likely have made a difference. I can understand Mr U on principle feeling he did not need to speak with Watford, given the engineer's findings. But I think that any reasonable person, if told that not speaking to the insurer will likely result in 10's of thousands of pounds being owed to the insurer – would likely become amenable to a further discussion. I don't think Watford did enough to explain to Mr U what the impact to him on his failure to cooperate might be. The policy required his cooperation but I think he still reasonably needed to be able to make an informed decision about complying with that – and that meant he needed to be made aware, clearly, of what the consequences to him of non-compliance might be. I don't think Watford did that here. So I don't think it can fairly and reasonably expect Mr U to reimburse its claim outlay of over £90,000.

I'm also mindful though that with the engineer's revised view on the damage exhibited on Mr U's car, and the CCTV footage, it's likely that Mr U's lack of cooperation did not make one iota of difference to the claim outcome or settlement Watford paid. Certainly Watford has not shown that the outcome was affected. So, even looking at this just from the perspective of the outcome of the pedestrian's claim, I think it's a bit harsh to seek recovery from Mr U of the outlay. His lack of cooperation, in my view, was, on this occasion no more than a technical breach of the policy requirements. And, as Watford likely knows, this service won't usually find that it is fair for policyholders to be negatively affected by a "technical" breach ie one which is not material.

I can see that Mr U has been very upset by Watford's demand for money. I think most people would worry about being told they would have to pay over £90,000. And I bear in mind that this demand by Watford, for Mr U, came at a particularly difficult time. I trust that this decision, which, if accepted within the deadline given, will prohibit Watford from claiming its outlay back from Mr U, will bring an end to his worries. But I also think that for the upset that the demand caused Mr U, £750 compensation is fairly and reasonably due.

### **Putting things right**

I require Watford to:

- Stop viewing Mr U as owing it £91,720.25, being its outlay for the pedestrian's claim, less the policy payments and confirm to Mr U that he does not have to pay it anything.
- Pay Mr U £750 compensation.

### **My final decision**

I uphold this complaint. I require Watford Insurance Company Europe Limited to act in line with and provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 15 February 2023.

Fiona Robinson  
**Ombudsman**