

The complaint

Ms F complains that U K Insurance Limited (“UKI”) mishandled a claim on her motor insurance policy.

What happened

Ms F had a hatchback car. For the year from 24 October 2021, she had the car insured on a comprehensive policy. UKI was the insurer responsible for dealing with any claim.

Unfortunately on 27 October 2021, Ms F and a third party were involved in an incident on a roundabout. The incident was recorded on Ms F’s “dashcam”, which provided images from the front and rear of her car.

In late September 2022, Ms F’s renewal was becoming due, and she contacted UKI for an update on the claim.

In early October 2022, UKI told Ms F it proposed to accept a 50/50 split of liability between her and the third party. Ms F complained to UKI about shortcomings in its investigation and communication and about the split liability.

By a final response dated late October 2022, UKI turned down the complaint about investigation and split liability. But it said that it had failed to provide Ms F with updates for almost 11 months. So it said it was sending her a cheque for £250.00 as an apology.

Ms F brought her complaint to us in mid-February 2023. She said that UKI should record the claim as non-fault.

Our investigator recommended that the complaint should be upheld (in part). He didn’t agree the claim should be changed to non-fault. But he thought that £250.00 compensation didn’t make up for the lack of communication. He recommended that UKI should increase the offer of compensation by £200.00 to truly make up for their lack of proactiveness.

UKI accepted the investigator’s opinion.

Ms F disagreed with the investigator’s opinion. She asked for an ombudsman to review the complaint. She says, in summary, that:

- There are no road markings on the roundabout itself but there is clear signage on the approach to the roundabout.
- The third party disregarded the highway code.
- If UKI had contacted the witness, she could have provided a statement that the other driver appeared to start to take that exit but then change his mind without warning.
- In her initial statement, she said the witness even commented that she thought the third party must have been ‘under the influence’ of something.

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.

Where an insurer has made an outlay on a claim, it's common practice for the insurer to record the claim as a fault claim against its policyholder unless and until it makes a full recovery of its outlay, typically from a third party or their insurer. Where liability is split between the policyholder and the third party, each insurer will recover part of its outlay but not its full outlay.

Most motor insurance policies contain a term allowing the insurer to decide how best to deal with liability in relation to a third party. UKI's policy included the following term:

"3. Claims procedure – Our rights and your obligations

a. You must not admit liability for or negotiate to settle any claim without our written permission.

b. We are entitled to:

☐ *take over and carry out the negotiation, defence or settlement of any claim in your name...*

☐ *take proceedings in your name...for your, or our own benefit."*

In my view, that term meant that – on a question of how best to deal with an issue of liability in relation to a third party – UKI's view would prevail over its policyholder's view.

Ms F's incident with the third party and the need to make a claim were, in my view, bound to cause her some upset and put her to some trouble.

I'm satisfied that UKI noted Ms F's report of the circumstances of the accident. She said she had indicated and manoeuvred to exit the roundabout slightly ahead and in the lane to the right of the third party who was positioned to take the same exit in the left lane but who – without indicating right – carried on round the roundabout, hitting her car in the middle of its nearside.

From its file, I've seen that UKI tried (unsuccessfully) to contact the witness a couple of days after the incident. Later, UKI received clear dashcam footage of the incident. So I consider that it was proportionate to rely on that rather than chasing the witness.

Unfortunately, the third party or his insurer wouldn't accept full responsibility for the accident.

I'm not persuaded that the witness evidence would've made any difference to the outcome. Ms F disagreed with the witness's assessment that the third party was "under the influence". Even if the witness had confirmed that the third party had admitted responsibility at the scene, he or his insurer might still have disputed responsibility later.

There was a period of about nine months when UKI's file shows no contact with the third party's insurer. There was an even longer period when UKI's file shows no update to Ms F. I regard these as serious shortcomings. However, UKI had the dashcam footage. So I'm not persuaded that the delay prejudiced the outcome.

UKI's investigation included noting the nature and location of the damage to Ms F's vehicle. The investigation included, in particular, a review of the road layout and the dashcam footage. UKI noted that the roundabout had no road-markings prohibiting the third party from using the left lane to continue beyond the main exit Ms F was using. I'm satisfied that UKI did a reasonable and proportionate investigation.

UKI weighed up the cost and risk of court proceedings against the prospects of success. UKI decided to settle on the basis of split liability. Split liability is not unusual in the context of an accident on a roundabout. Keeping in mind the policy term I've quoted, I don't consider that UKI's decision was unreasonable or unfair to Ms F.

Ms F objected on the basis of road signage before the roundabout. But UKI didn't agree that the signage was clear in her favour.

By the time she brought her complaint to us, Ms F had found an instructional video from a local driving instructor. But I don't think that had been available to UKI at the time it made its decision. And I'm not persuaded that it would've been enough to persuade the third party's insurer to accept liability or enough to justify the cost and risk of court proceedings.

So I don't find it fair and reasonable to direct UKI to record the claim as non-fault.

I accept that any claim, and particularly a fault claim, is likely to have an adverse effect on the policyholder's premium from the next renewal date for a few years.

Putting things right

UKI's delay made Ms F believe that the outcome should've been different. I've disagreed with that. Nevertheless Ms F's belief wasn't unreasonable and caused her upset. So I find it fair and reasonable that UKI paid Ms F compensation.

We have published guidelines for assessing compensation for distress and inconvenience. Weighing up the impact on Ms F of the shortcomings I've found in UKI's service, I consider that the investigator's recommendation of a total of £450.00 is higher than I would've found fair and reasonable. However, UKI has agreed to it, so I find it fair in this case.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct U K Insurance Limited to pay Ms F – in addition to the £250.00 already paid – a further £200.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 31 August 2023.

Christopher Gilbert

Ombudsman