

The complaint

Mr F has complained about Mulsanne Insurance Company Limited's decision to not meet a claim under his car insurance policy because he changed the use of his car.

All reference to the insurer Mulsanne in my decision includes its agents.

What happened

Mr F bought a car insurance policy with Mulsanne in May 2022. He paid for social, domestic, pleasure and commuting (to a single place of work) use.

In October 2022 Mr F was involved in an incident with another car which he reported to Mulsanne. He said the purpose of his journey was to meet a client at a coffee shop. Both Mr F's car and the other car was damaged. The other driver made a claim against Mr F's policy.

Mr F said he was flustered as he'd never had to make a claim before. He later told Mulsanne he was picking up breakfast on his way to the office and was meeting a client there.

Mulsanne declined Mr F's claim. It said it was obligated to deal with the (other driver) third party's claim under the Road Traffic Act as Mr F's last insurer. Mulsanne said it wasn't offering indemnity for Mr F as he was using his car for business use when the incident happened and his policy didn't cover him for that. This meant that Mulsanne would look to recover the costs it pays to settle the claim from Mr F directly.

In December 2022 Mr F complained to Mulsanne. In February 2023 Mulsanne didn't uphold Mr F's complaint. It said Mr F wasn't covered for the trip when the incident happened as he said he was driving to meet a client at a coffee shop.

Mr F asked us to look at his complaint. Our Investigator thought it should be upheld. Mr F told us that he used to work in an office, but this had changed to working sometimes from home and sometimes in the office.

Mulsanne had shown that if it changed Mr F's policy to include business use, it would have charged him an extra premium of 4.6%. As Mulsanne believed Mr F was using his car for business use when the incident happened, the Investigator thought the fairest outcome was for Mulsanne to meet the claim on a proportionate basis, so cover 95.4% of the costs - as Mr F hadn't paid the additional premium difference for business use.

So in April 2023 the Investigator recommended Mulsanne meet 95.4% of the costs to settle the claim, including the third party claim. If Mr F had paid costs under the claim (to repair his car), she recommended Mulsanne reimburse Mr F and pay interest at 8% simple interest a year on the reimbursement.

Mr F accepted the Investigator's view. Mulsanne didn't respond.

So the case has been passed to me to decide.

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.

Mr F's policy says he must notify Mulsanne of certain changes after he bought the policy:

"Changes to your insurance

It is important that you tell us immediately about any changes to the information that you have provided which is detailed in your statement of fact, schedule and certificate of motor insurance.

Failure to notify us of any changes may result in your policy not being valid and we may not pay your claim or only pay part of your claim. We may also cancel or void your policy.

For example, you must tell us about:"

"You change what you or anyone covered by this policy use your car for (for example, you start using it for business purposes or delivery purposes even if you have arranged separate insurance for this);"

I think it was reasonable for Mulsanne to rely on Mr F's account that he was meeting a client at a coffee shop as he confirmed this in two calls following the incident.

Where there is a change after a policy is set up, a customer has an ongoing duty of disclosure. However, where the change in risk isn't fundamental, we don't think it's fair or reasonable for an insurer to change its mind about what cover it provides.

If Mulsanne had been notified of the change in use to include business use for Mr F, it would have continued to provide insurance and charged an extra 4.6% of the original premium Mr F paid. And so in this case I think Mulsanne's application of the 'change in risk clause' is unfair. I think a fairer outcome is for Mulsanne to settle the claim on a proportionate basis under the remaining terms and conditions of the policy.

I understand Mr F has received correspondence from the third party's solicitor about claim costs. I can see that the solicitor has sent a copy to Mulsanne. So if Mr F accepts my decision, it is for Mulsanne to act on Mr F's behalf and deal with the third party correspondence in order to settle the claim.

My final decision

My final decision is that I uphold this complaint. I require Mulsanne Insurance Company Limited to settle the claim under Mr F's car insurance policy proportionately under the remaining terms and conditions of the policy.

If Mr F has paid claim costs - subject to reasonable proof of payment - I require Mulsanne Insurance Company Limited to reimburse Mr F.

Mulsanne Insurance Company Limited should pay interest on the reimbursement at a rate of 8% simple interest a year from the date of payment to the date it reimburses Mr F.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 19 October 2023.

Geraldine Newbold
Ombudsman