

The complaint

Miss D has complained about her car insurer Watford Insurance Company Europe Limited regarding a claim she made after being involved in an accident with another car.

Watford uses another company to handle its claims on its behalf. Watford is liable for the actions of the other company. I'll only refer to Watford in this decision.

What happened

Miss D was leaving a friend's home in August 2021. As she left she had to manoeuvre out of her parked position. She and another car collided. Miss D felt the other driver had been speeding. Watford handled the claim on Miss D's behalf putting forward her position that she had not been at fault for the accident. But it also told her it may have to settle the claim as one of split liability. Miss D wasn't happy about that and Watford continued to review the claim. In May 2022 Watford confirmed it had settled the claim, without prejudice, on the basis of Miss D being 50% at fault. It refunded her £177.50, half of the policy excess.

Miss D complained to the Financial Ombudsman Service. She thought Watford had acted unfairly and unreasonably settling the claim as it had. Miss D said she felt a fair outcome would be for the claim to show as 'non-fault' on her part so she wouldn't incur extra costs over the coming years. She also noted the time she'd taken to deal with matters.

Our Investigator felt Watford hadn't investigated the claim very well. So he felt Watford should amend the record of the claim on the industry database. He also felt Watford hadn't communicated well with Miss D, so felt it should pay £150 compensation.

Watford agreed. Miss D did not. She was pleased with the complaint being upheld – but felt that, that being the case, Watford should also give her a pro-rated policy refund and return the remainder of her excess. She also felt more compensation should be paid. The complaint was passed to me for an Ombudsman's decision.

I took a different view to our Investigator. I felt Watford should still pay Miss D some compensation, with a slightly higher award of £250 being fair and reasonable. But I didn't think Watford had failed Miss D in the claim decision it reached – so I wasn't minded to require it to amend the industry database or make any further payment to Miss D regarding any costs she's incurred or is worried she will incur. So I issued a provisional decision, my findings of which were:

"Claim decision

Watford issued a final response to Miss D on 14 October 2021. At that time it had already been thinking about settling this on a split liability basis. It was only more than six-months later though that it finalised its view on the complaint outcome and Miss D complained to this service. So I've looked at what happened and what was decided following the October letter.

Miss D clearly feels that this accident was not her fault. But considering Watford's file from October 2021 it seems the other driver was of a similar view – that they were not at fault. At that time Watford was aware that a housemate of the friend Miss D had been visiting had

seen the accident and it was waiting for their statement. I think it's fair to say that Watford's view was that whilst it accepted Miss D's belief – it wasn't persuaded that was a position that could be relied upon in court, but that a strong witness statement might give it some chance of a better outcome (than 50%) for Miss D.

I think that was a reasonable position for Watford to take. In explaining my view in this respect, it's useful to explain that a basic premise that often runs through accident liability issues is that a driver embarking on a manoeuvre bears the greatest responsibility for ensuring the road is clear. And it is also my understanding that speed, on the part of the other driver, is not always considered by the courts as an entirely mitigating factor for the liability of the manoeuvring driver.

Here I can see that the other driver's view was that Miss D, whilst starting to manoeuvre out of her parking space, had encroached on to their side of the road where they were already established in moving along it. But Watford, especially bearing in mind how strongly Miss D felt about this, wanted to see the witness statement. I can understand why – if the witness evidence suggested the other driver was wrong in some way – that the collision had not occurred on the other driver's side of the road, or that Miss D was well established in her manoeuvre when the other car came upon her, for example – then that might have changed things. It might have been persuasive evidence which Watford could have used to negotiate a better settlement. But, it's fair to say though that, when the witness statement was received, Watford's view was that it didn't help support Miss D's position. And I can see that it was following receipt and consideration of this evidence that Watford concluded it couldn't reasonably continue to challenge liability on Miss D's behalf, and it subsequently settled the claims on the basis of Miss D being 50% liable.

The claim was settled that is, on a without prejudice basis. Which means that Miss D would be free to take her own action against the other party in court if she wished to.

I know Miss D feels strongly that the other driver was speeding. But as I said above, speed on the part of the other driver, wouldn't necessarily mean she had no liability at all for the accident. I can understand that she'd have liked Watford to have analysed the marks left at the scene and taken into account other detail too, which she thinks would have shown the other driver was moving too fast. But I can't reasonably expect an insurer to carry out possibly expensive and time consuming investigations which, regardless of any conclusions found, aren't likely to materially influence the claim's outcome.

With regret for the disappointment I know this will cause Miss D, I think, overall, that Watford's claim decision, that Miss D was in part at fault for the accident, was a fair and reasonable one.

Losses

I recognise that having a fault claim on her history will cause some difficulty, and possibly costs for Miss D in future – the industry database will show a 'fault' claim, she'll have lost her no-claims bonus, and won't have all her excess refunded. Miss D has also mentioned being entitled to a pro-rata refund. But as I'm satisfied that Watford's decision was fair and reasonable, I've no grounds on which to require it to make amends for any of these.

The industry database is meant to accurately reflect claims which have occurred. So (and despite Watford's agreement to our Investigator's view) I could only fairly and reasonably require Watford to amend it, if I felt that, but for any error by it, the claim would most likely have been settled as one of non-fault against Miss D. That wasn't the case here. So it wouldn't be appropriate for me to maintain the award requiring Watford to amend the database.

I appreciate that losing her no-claims bonus, along with having a fault claim on her record, is likely to affect Miss D's premiums in the next few years. But that, along with her not being reimbursed all of her excess, is a loss which flows reasonably from the unfortunate circumstance of being involved in an accident, resulting in a claim on the policy, which is fairly and reasonably settled on a fault basis.

Miss D has said she thinks Watford should give her a pro-rata refund of her policy premium as the policy ended early following the accident. She's referenced policy wording which says that pro-rata refunds will be given in the event of policy cancellations where there is no claim on the policy. She says that as she was not at fault for this accident it can't fairly be said that she made a claim on the policy. Miss D did make a claim on her policy for this accident. And I've set out my view above about Watford's decision on Miss D's liability. But I'd also add here that whilst Miss D has referenced the general cancellation terms in the policy – the policy also explains that in the event of a total loss settlement the full annual premium becomes payable. And Miss D's claim was settled by Watford as one of total loss.

How the claim was handled

I think this is where Watford failed Miss D. I think it could have been clearer with her as to what would happen depending upon what the witness statement showed. I also note that whilst it received that in October, and seemingly finalised its view on the complaint outcome around that time, by Christmas it noted it hadn't started action to recover 50% of its outlay. And despite contact from Miss D during that time it didn't confirm its claim outcome decision with her in writing until May 2022, with her excess reimbursement following.

I note how strongly Miss D feels about this claim. And also that Watford knew this too. I'm also aware that Miss D was under the impression, following their contact in October 2021, that Watford was reviewing its initial intention to deal with the claim on a split liability basis. So I think it was particularly upsetting for Miss D to learn, many months later that the position had not changed.

I think, if Watford had managed this better, much of the upset Miss D has felt could have been avoided. She also wouldn't have needed to contact it as much as she did. Overall I think £250 compensation is fairly and reasonably due. To be clear this is in respect of upset which has occurred after Watford's final response letter of 14 October 2021."

Watford said it had nothing to add. Miss D said she was disappointed – that she thought I had decided to penalise her because she had disagreed with the redress suggested by our Investigator. It must just be, she said, that I wanted to teach her a lesson. She asked what was the point of our Investigator issuing findings if the Ombudsman just ignored them. She didn't think she'd been treated fairly. Miss D said she knows the other party was speeding – that if they had not been, then there would not have been an accident and the damage showed that she was already two-thirds of the way through her manoeuvre when they drove into her. Miss D said Watford and this service had failed to investigate properly, with it being wholly unfair that I had condoned its actions in that respect. She said she'd spent far more time than reflected by the £250 compensation.

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 Miss D's upset. But I can assure her that my decision was not made to punishing her for disagreeing with our Investigator (as to the extent of redress he'd recommended). This service operates under rules set out in the regulator's (the Financial Conduct Authority) handbook. They require us to operate a two-stage process. This allows for a complaint to be

considered initially, with both parties getting a chance to respond and object, or agree. If both agree then the complaint will close. But if either objects then they have the right to ask for a review. And that is a review of everything – which can mean that the Ombudsman takes a different view on the complaint to that expressed by an Investigator. Which is why it is also part of our process to explain to both parties that, asking for an Ombudsman's review might result in a change to the outcome of the complaint.

I absolutely understand that Miss D believes she did nothing wrong. That she has no doubt that the other driver was speeding. And I think there is likely evidence of exactly that – that Watford even acknowledges that there is some evidence of speed likely being a factor in the accident. But Watford's view was that even if speed could be proven in the way a court would accept, that likely wouldn't be enough to show that Miss D bore no liability at all for the accident. Which would mean that the claim would always end up being recorded as one of split liability.

I can see why Miss D feels that £250 compensation is insufficient given all the time she has spent dealing with Watford. But I am satisfied that, for the upset caused by Watford not handling the claim well, £250 compensation is fairly and reasonably due.

With regret for the further disappointment I know this will cause Miss D, I confirm that my view on the complaint hasn't changed from that expressed provisionally. So my provisional findings, along with my comments here, are now the findings of this, my final decision.

Putting things right

I require Watford to pay Miss D £250 compensation.

My final decision

I uphold this complaint. I require Watford Insurance Company Europe 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 D to accept or reject my decision before 23 June 2023.

Fiona Robinson
Ombudsman