

The complaint

Mr W is unhappy with the liability decision made by Acromas Insurance Company Limited (Acromas) following a claim made by a third party on his car insurance policy.

What happened

In August 2022 Mr W's car was involved in an incident involving a third party (TP). Mr W was on a roundabout and wanted to take the second exit. He positioned himself on the inside right lane of the roundabout. The second exit included two lanes. As Mr W approached the second exit, he indicated left and began driving off the roundabout. Before Mr W's car could enter the right hand lane of the second exit, the TP hit Mr W's car. The TP's car scraped the left hand passenger door of Mr W's car. The impact of this caused Mr W's car to veer to the right hand side of the lane.

Mr W decided not to make a claim for the damage to his car under his car insurance policy. The TP's insurer contacted Acromas to claim for the damage to the TP's car. Mr W sent Acromas dashcam footage of the incident. This included footage from both the front and rear dashcam from Mr W's car. Mr W sent this footage twice to Acromas before it was received.

Mr W was told *'this would be a split settlement due to [Mr W] switching lanes coming off of roundabout.'* The case notes describing the incident recorded *'Both parties were off roundabout in lanes at time of incident but TP has tried to undertake our PH and hit just the rear doors N/S. This suggests the TP was very close when trying to undertake. Insisted he maintained same lane coming off roundabout and was in the right lane.'* Mr W complained about the handling of his claim, and Acromas' response about how it would be settled.

Acromas paid the TP's credit hire costs. On 24 May Acromas wrote to the TPI seeking reimbursement of these costs, and a response on liability. It was also explained *'Please be aware that our Recovery process is fully automated and therefore failure to respond will result in litigation.'*

Acromas responded to Mr W's complaint offering £150 for the poor service provided when misplacing the dashcam footage that had to be resent. Acromas also explained *'On reviewing the file, it was considered that the probability of recovery at best was 50/50...A decision has been taken that we will not pursue the liability dispute through the courts as the likely outcome will remain the same.'*

Unhappy with the response from Acromas, Mr W brought his complaint to this service for investigation. Mr W said he was unhappy with the way his claim had been dealt with, and that costs had been paid to the TPI, despite the dashcam footage showing the TP at fault.

The investigator found that Acromas hadn't acted reasonably when assessing Mr W's claim. This was because it had failed to properly consider the footage provided by Mr W, and telling him that the claim would likely be settled on a 50/50 basis wasn't reasonable. The investigator recommended Acromas record the claim as non-fault, and reinstate Mr W's no claims bonus to the position it would've been in had the claim be recorded as non-fault.

Mr W accepted these findings. Acromas rejected these findings saying:

- *'Whilst we understand the Customer provided dashcam evidence and support that he was in the right lane for his intended exit, we also acknowledge that the TP was most likely in the incorrect lane, however the footage shows that the TP in the dashcam was ahead of our Customer on the roundabout and therefore, whilst our Customer was in his correct lane, it was his duty to be aware of traffic to his left'.*
- *'...our commercial decision in such cases is to settle on the best possible terms, rather than contest the matter in Court, particularly if the costs of litigation outweigh the sums or the evidence or an uncertainty of us being successful.'*
- *'I do not consider that we have acted unfairly in concluding that the best possible outcome would be 50/50, with both parties taking some responsibility.'*

As the complaint couldn't be resolved it was passed to me for 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.

When we investigate a complaint about an insurer's decision on a claim, our role is to consider whether the insurer handled the claim in a fair and reasonable manner.

Given Mr W's strong assertions about what had happened, and conflicting evidence about who was responsible for the impact, I think there was a responsibility on Acromas to ensure that a fair investigation was carried out before communicating a decision on what would happen next. I accept that ultimately the decision to defend, or settle the claim was with Acromas to make. However we'd expect an insurer to take reasonable steps to carry out a fair and thorough investigation, and to keep their customer updated on this. Acromas' service fell short of this.

Following notification from the TP's insurer, I've seen that Acromas wrote to the TP saying *'Please be advised liability is in dispute as such we have not paid your outlay. Your insured has changed lanes into our insureds correctly proceeding vehicle.'*

Mr W was asked to provide his version of events, and supporting evidence. Mr W sent dashcam footage to Acromas of the incident as soon as he received notification of the TPI's claim. This included footage from both the front and rear dashcams from his car. The case notes show that the footage was reviewed by a Senior handler, and on this basis, a decision made that liability would be split 50/50. Mr W was informed of this in response to his complaint with an explanation that *'a decision has been taken that we will not pursue the liability dispute through the courts.'*

But I don't think Acromas did enough to challenge the TP's claim before deciding not to pursue liability. At the time of communicating this decision to Mr W, the TPI had yet to submit any evidence in support of their claim. Mr W had made strong representations about disputing liability, and had provided dashcam footage in the support of this. Before the incident with Mr W, there is evidence in the footage of the TP slightly swerving, and taking a sharp turn to pull into the lane Mr W was in. It doesn't appear that this has been referenced in the case notes by the Senior handler when referencing a split liability decision.

There's also no evidence of Acromas seeking a legal opinion on the claim before informing Mr W of their decision not to pursue the claim in Court. On balance, I think Mr W would've

challenged Acromas' decision, and requested Acromas explain their reasons, before reaching this decision on his claim.

During our investigation Acromas informed this Service *'I have requested that the Dash Cam evidence is sent to one of our Solicitors we use in defence of cases, for a considered opinion on reasonable prospects, as a way forward only to conclude should a dispute be presented, that we utilise this option. This course of action is not usually taken until we have all the evidence available to us, as we do not have the TPI's position on this.'*

However the explanation to Mr W didn't include any mention of referring the matter to solicitors for a considered opinion on reasonable prospects. Acromas say *'This course of action is not usually taken until we have all the evidence available to us, as we do not have the TPI's position on this.'* However it's evident from the TPI's original submission sent to Acromas on 15 September 2022 that the TPI was disputing liability, and held Mr W at fault. So if a legal opinion was going to be sought, it would've been reasonable to do this earlier in the claim, and at least, before informing Mr W that Acromas *'will not pursue the liability dispute through the Courts'*.

The TPI has to date not responded to Acromas' request for an update on liability. Acromas have explained that this has not actively been pursued as there are no losses to claim. So with the evidence available, I think it's reasonable to reach an outcome that reflects what's happened on this claim, and what should've happened. Mr W doesn't feel a 50/50 split liability outcome reasonably reflects what happened when the TP hit his car. And having considered the evidence I don't think Acromas did enough to investigate these concerns before informing Mr W of the likely outcome of his claim.

It's not for this service to determine what weight may have been placed on any evidence had this claim gone to the Court. I also accept that the outcome may still have been a fault claim being recorded against Mr W. But I think there was sufficient contradictory evidence (including Mr W's testimony, the dashcam footage, and lack of response from the TP) which Acromas should've investigated before deciding not to pursue the claim any further in Court.

I think a fair outcome for this complaint should reflect the fact that Acromas should've undertaken a more in-depth investigation before communicating their decision to Mr W about potentially settling the claim on a 50/50 basis. Acromas informed the TPI on 24 May that liability was being disputed, and the TPI's *'failure to respond will result in litigation.'*

Sufficient time has passed in which we would've expected Acromas to have sought a legal opinion and informed Mr W of the outcome of this, and/or started litigation proceedings against the TPI on the issue of liability. As this hasn't happened, and there's no indication of when the question of liability will be concluded, I think it's fair and reasonable for this Service to give direction on what Acromas must do to put things right.

Putting things right

With these considerations in mind, I think a fair outcome is for Acromas to:

1. Record Mr W' claim as non-fault; and
2. Reinstate Mr W's no claims bonus to the position it would be in had the claim been recorded as non-fault.

My final decision

For the reasons explained above I uphold Mr W's complaint.

Acromas Insurance UK Plc must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 October 2023.

Neeta Karelia
Ombudsman