

The complaint

Mrs W complains about U K Insurance Limited's (UKI) handling of her claim following an accident she was involved in when driving, under her motor insurance policy.

What happened

In September 2023 Mrs W was involved in a car accident. She says she was turning right when another driver overtook and collided with her car. She doesn't think UKI should agree to a 70/30 split liability outcome even if this is in her favour. She holds the third party fully responsible.

Mrs W says UKI determined her car was a total loss. But it refused to provide a report outlining the repairs that were needed. She intended getting a quote for the repairs from an independent garage. But says UKI made this difficult as her car wasn't roadworthy so she couldn't take it to a garage. She also says she had no damage report to show the extent of the repairs needed. Mrs W says she managed to arrange a partial inspection, but this was limited in scope due to the lack of a car lift.

Mrs W says she provided UKI with contact details for witnesses to the accident. However, it delayed making contact, which resulted in no witness reports being provided.

In its final complaint response UKI says Mrs W had a duty of care when performing a right turn manoeuvre to ensure it was safe and clear to do so. It says the third party's insurer (TPI) claimed Mrs W was fully at fault. But UKI proposed a 70/30 split in her favour based on her dashcam footage, which it says shows the third-party was overtaking dangerously.

UKI paid Mrs W £250 compensation for several instances of poor service during its handling of her claim. This includes a lack of progress updates, not knowing the location of Mrs W's car, poor call handling, and providing an incorrect salvage figure.

Mrs W didn't think she'd been treated fairly by UKI and referred the matter to our service. Our investigator didn't uphold her complaint. She says it's not our role to decide liability for an accident – this is the role of the courts. But she was satisfied UKI had considered all the available information fairly when considering Mrs W's claim. Our investigator thought UKI's compensation payment was fair given the shortfalls identified in its claim handling.

Mrs W didn't accept our investigator's findings and asked for an ombudsman to consider her complaint.

It 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.

Having done so I'm not upholding Mrs W's complaint. Let me explain.

Mrs W's policy terms say:

"When we can act on your behalf

We're entitled to do either of the following:

Take over and carry out the negotiation, defence, or settlement of any claim in your name, or in the name of any other person covered by this policy.

Start legal proceedings in your name, or in the name of any other person connected to this policy. This can be for your benefit or our own benefit."

This is a common term used by insurers. It effectively means it's up to UKI to decide how to deal with a claim. It doesn't need Mrs W's permission to do this. However, this doesn't mean it can do anything it wants. It must still treat Mrs W fairly.

Mrs W supplied UKI with dashcam footage of the accident. It says she was performing a manoeuvre when the collision occurred. It says this means she holds the '*greatest duty of care*' when doing so to ensure it was safe and the road was clear. I note its comments that the third-party's insurer alleged Mrs W was fully at fault given the manoeuvre she was performing. But UKI says it was able to argue a 70/30 liability split in Mrs W's favour based on the dashcam footage she provided. UKI says when considering the evidence along with the highway code, Mrs W must take some of the blame for the collision.

I've watched the dashcam footage Mrs W provided. Prior to the accident she first pulls over to the left-hand side of the road. A number of vehicles pass on the right side of Mrs W's car. After one minute forty seconds a car pulls out from a parking space on the other side of the road. Mrs W drives forward, then slows to a crawl and pulls to the left of the road waiting for an approaching car to pass. She then turns right and collides with the third party who is in the process of overtaking her car.

I note Mrs W's comments that delays in UKI contacting two witnesses to the accident meant they didn't provide statements. I can see from the records that the witnesses were contacted. Mrs W says one had moved address and the other wouldn't provide a response in the way UKI had requested. I note what she says but UKI did contact both of the witnesses by phone and text message. I don't think it's reasonable to blame for the lack of a response from the witnesses. I also note UKI's comments that the dashcam footage constitutes better evidence than a witness statement.

As our investigator explained it's not the role of our service to determine who's to blame for an accident. That's the role of the courts. My role is to consider if UKI behaved fairly. Based on what I've read I think it did. It's clear that it considered the relevant evidence when deciding how to best deal with Mrs W's claim. It didn't think a court would agree with her view that she was entirely blameless. Particularly as she was performing a manoeuvre and had a duty of care to ensure the road was clear. This is why it sought a 70/30 liability split in her favour. Based on the evidence I think it acted reasonably.

I note what Mrs W says about UKI relying on Scottish case law to support its liability decision. She doesn't think this applies outside of Scotland. I asked UKI to comment on this point. In its reply it says this case law is still relevant as a reliable indicator of how a judge will settle a claim, regardless of where the incident occurred. Although I've thought about what Mrs W says, I don't think its decision to settle on a 70/30 split was unreasonable based on the evidence it's referred to.

I can see that Mrs W requested a copy of UKI's repair report. It initially declined to provide

this stating it contained business sensitive information. However, it did later provide a redacted copy of the report on 19 October 2023 by email. The records indicate that Mrs W wasn't able to open the report attached to the email using her tablet. She says this information was sent too late in any case as she'd already decided to retain the salvage of her car by this point.

I acknowledge Mrs W's concerns about misinformation regarding the cost of retaining the salvage of her car. As well as issues when discussing her claims over the phone with UKI's agents, its agents not knowing the location of her car, and its failure to keep her informed of progress on her claim.

I think Mrs W's claim experience could've been better. This resulted in frustration and some inconvenience for her. In these circumstances I think it's reasonable that UKI acknowledges its failings with compensation. But I think the £250 it has already paid is fair.

In summary, I don't think UKI treated Mrs W unfairly when it decided to deal with her claim in the way it did. Its overall handling of her claim and communication should've been better, but I think it's done enough to put this right with the compensation it paid. So, I can't fairly ask UKI to do anymore.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 11 June 2024.

Mike Waldron
Ombudsman