

The complaint

Mr B complains about how First Central Underwriting Limited dealt with a claim against his motor insurance policy. Mr B's father, Mr B1, is assisting Mr B in bringing his complaint. Reference to First Central includes its agents.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here in full. In summary, Mr B has motor insurance underwritten by First Central. The policy relevant to this complaint started on 31 December 2021. On 16 December 2022, Mr B was involved in an accident whilst driving. First Central's records indicate that on 28 December 2022, Mr B made a claim against his policy in relation to damage to his car. He told First Central that the accident was the third party's fault. I'll refer to the details of the accident in more detail below.

On 9 January 2023, First Central wrote to the third party's insurer and said that the accident was the third party's fault. On 17 January 2023, the third party's solicitor wrote to First Central and asked it to accept liability for the accident.

On 14 April 2023, First Central told Mr B that it had received a claim from the third party which it didn't think it would be able to defend. It gave Mr B seven days to make objections to that course of action. On 20 April 2023, Mr B responded to First Central and objected to its decision on liability and its handling of the claim.

In response to Mr B's complaint, First Central maintained its position on liability but sent Mr B compensation of £100 in relation to its failure to look into the possibility of obtaining CCTV recordings when Mr B suggested it, and its delay in processing his claim. Mr B didn't accept that and pursued his complaint.

Mr B says that First Central didn't take into account his version of events before coming to its conclusion. He says that First Central settled the claim out of expediency and cost cutting and didn't represent him. Mr B said that First Central failed to request CCTV, which would have provided it with independent proof of what happened. He says that there was excessive delay in First Central's handling of his claim. Mr B wants First Central to reinstate his no claims bonus and to record the incident as '*non-fault*'.

One of our investigators looked at what had happened. She said that the policy provides that First Central can decide how to handle a claim. The investigator didn't think that First Central had failed to undertake a reasonable investigation before deciding its position on liability. She said that First Central agreed that it should have looked into the availability of CCTV recordings but that its failure to do so wouldn't necessarily change the outcome here.

The investigator didn't think that there was any basis on which she could recommend that First Central reinstate Mr B's no claims discount. She thought that the compensation of £100 First Central had already paid was fair and reasonable.

Mr B didn't agree with the investigator. Mr B1 said, in summary, that First Central made a mistake in failing to access CCTV footage and the investigator was wrong not to conclude that it should put matters right. Mr B1 said that First Central admitted that it didn't look into obtaining CCTV recordings, delayed in processing the claim and failed to read Mr B's e-mail of 20 April 2023.

A second investigator reconsidered the complaint. He didn't think that the CCTV recordings would have materially altered the outcome here. The second investigator didn't think that the time First Central took to deal with the claim was unreasonable. He thought that the compensation of £100 First Central had already paid was fair.

Mr B1, on Mr B's behalf, didn't agree with the second investigator and asked that an ombudsman consider the complaint, so it was 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.

It's clear that both Mr B and Mr B1 have strong feelings about this matter. Mr B1 has provided detailed submissions to support the complaint. I've read through all this carefully and taken it all into consideration when making my decision. I trust that neither Mr B nor Mr B1 will take as a discourtesy that I concentrate on what I think are the central issues in the case. I have a good understanding of the points that have been made, so I don't need to speak with either Mr B or Mr B1 for the fair resolution of this complaint and it's rare that this is necessary.

The relevant rules and industry guidance say that First Central has a responsibility to handle claims promptly and fairly. I don't uphold Mr B's complaint for the following reasons:

- I appreciate that Mr B remains of the view that the third party was responsible for the accident. As Mr B and Mr B1 are aware, this service can't determine who is responsible for an accident: that's the responsibility of the courts. Our role is to look at whether First Central handled the claim fairly and reasonably and, in particular, considered everything all parties provided before coming to its conclusion.
- Mr B's policy, like other car insurance policies, allows First Central to defend, settle or admit liability for any accident or claim on Mr B's behalf. It doesn't represent Mr B in doing so and is entitled to settle the claim in the way it deems fit. But it should do so fairly and reasonably, taking into account everything provided.
- There are two versions of how the accident happened. Essentially, the third party says that he was about to turn left into a side road when Mr B's car collided with his car. Mr B says that he was turning right onto a side road, through a gap left by stationary traffic when the third party's car collided with his. Mr B says that the third party wasn't indicating a left turn and was proceeding at speed in a bus lane, undertaking the stationary line of traffic.
- It's clear that Mr B disputed liability when he first contacted First Central about his claim. First Central accepts that it should have taken steps to obtain CCTV recordings. Its error in not doing so meant that Mr B lost the opportunity to find out whether the CCTV recordings would support his description of the accident. But I'm afraid I don't share Mr B1's certainty that if First Central had obtained CCTV recordings it would have definitely changed the outcome here and I'll explain why.

- It's by no means certain that relevant CCTV recordings would have been available, even if First Central had sought to obtain them when Mr B first made his claim. I appreciate that Mr B1 has shown that bus lanes are enforced by static cameras and mobile detection units. But that doesn't mean that every part of every bus lane is recorded by CCTV. And operators of CCTV don't retain recordings indefinitely: it's common for there to be a program of deletion.
- Even if the CCTV recordings were available and showed the third party driving in the bus lane before the accident, I don't think that would mean that the only reasonable conclusion was that the third party was wholly responsible for the accident. As Mr B was turning right across a lane of traffic, the oncoming traffic had right of way. It's common ground that the collision occurred at the junction. First Central has established that the solid white line which marks the bus lane isn't in place at the junction, so the third party's car wasn't in a bus lane at the point of collision.
- Insurers record a claim as a '*fault*' claim when it hasn't recovered all its costs from a third party. So, even if First Central concluded that Mr B was only partly at fault for the accident, it would still record this as a '*fault*' claim and Mr B's no claims discount would still be affected.
- I find that, before coming to its final decision on liability, First Central considered both Mr B's and the third party's versions of events, the road layout, relevant images and Mr B's e-mail response of 20 April 2023. I appreciate that Mr B1 says that in a phone call on 22 May 2023, First Central admitted to him that it hadn't read Mr B's e-mail of 20 April 2023. I don't doubt Mr B1's recollection about what he was told, but First Central's contemporaneous notes show that it reviewed Mr B's response on 16 May 2023 and it didn't change its decision.
- As it was one party's word against the other, since there was no independent witness evidence, First Central reasonably decided that it would find it difficult to defend the third party's claim and it therefore sought to deal with the claim on the best possible terms, as it's entitled to do. I don't think that it acted unfairly or unreasonably in coming to that view. First Central initially tried to proceed on the basis of shared liability but was unable to achieve that outcome.
- First Central is entitled to consider the likely outcome of defending the claim and going to court. It clearly thought that, if the claim proceeded to court, Mr B was likely to be held liable and that it wouldn't be able to defend the claim the third party had made. And it's fair that it wished to avoid the risks and costs associated with that. It's not in First Central's interests to accept liability for claims it thinks it can win.
- Mr B complains about First Central's delay in dealing with the claim. First Central accepts that it didn't pass the third party's claim to its personal injury team until April 2023. I've seen from First Central's records that it reviewed the claim in January 2023 and was dealing with engineers and estimates in February 2023. In March 2023, it reviewed the claim again. There was some delay in referring the third party's claim to its personal injury team but I don't think that altered the outcome here.
- Considering everything, I don't think there are any grounds on which I can fairly direct First Central to reinstate Mr B's no claims bonus and record the incident as '*non-fault*'. I think that the compensation of £100 First Central has already paid in

relation to its failure to look into obtaining CCTV recordings and delay in referring the matter to its personal injury team is fair and reasonable. In reaching that view, I've taken into account the nature, extent and duration of Mr B's distress and inconvenience as a result of those errors. I note that Mr B says that he doesn't intend to cash the cheque, which is now stale in any event. If Mr B changes his mind about that, he should ask First Central to reissue a cheque.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 May 2024.

Louise Povey

Ombudsman