

The complaint

Mrs M complains about how her insurer, Soteria Insurance Limited (Soteria), dealt with liability for a claim made under her motor insurance policy.

References to Soteria in this decision include their agents.

Mrs M was supported by a representative in bringing her complaint. References to Mrs M include her representative.

What happened

In August 2021 Mrs M was involved in an accident with her vehicle being in collision with a third party vehicle. Mrs M said her vehicle was hit from behind by the other vehicle. Both vehicles contained only the driver, no-one was injured, and the police weren't called. Mrs M contacted Soteria the following day to tell them about the accident and lodge a claim. Mrs M's vehicle was subsequently repaired, at a cost of £2,882.

While Mrs M maintained the third party was at fault for the accident, saying they ran into the back of her while she allowed a bus to pull out, the third party insurer held her liable for the accident, as the third party said she reversed into their vehicle, while the bus was pulling out. Soteria asked Mrs M for a more detailed account of the accident, which she provided in October 2021. But she didn't receive an acknowledgment and didn't hear from Soteria until June 2022. Soteria contacted Mrs M to say the third party driver had provided a witness statement from a pedestrian at the scene, saying Mrs M reversed into the third party vehicle. Based on the witness statement, Soteria told Mrs M they held her at fault for the accident.

Soteria provided Mrs M with a copy of the witness statement, which she challenged on the grounds the third party driver left the scene of the accident immediately after the incident without speaking to any other party and the length of time to when the statement was produced (December 2021) and provided to Soteria (February 2022).

Unhappy at being held at fault for the accident and the way they'd handled her claim, Mrs M complained to Soteria. In their second of two final responses, issued in August 2022, Soteria acknowledged they hadn't provided the level of service Mrs M should have expected in handling her case, including losing her written account of the incident and not contacting her until June 2022. But they said they had disputed liability for the accident until receiving the witness statement, which made it difficult for them to continue contesting liability. Soteria apologised for Mrs M having to contact them several times to obtain a copy of the witness statement, and not responding directly to her challenge to the statement.

In terms of the statement, Soteria said where there was a dispute about liability for an accident they would consider the available evidence, and where there wasn't any other evidence to show what happened they would look to split liability. While they approached the third party to ask why the statement took so long to be produced, the length of time wasn't sufficient to refute the statement - as Mrs M maintained it was fabricated. To do so would require additional evidence (such as CCTV or another witness statement). Soteria also didn't believe they had sufficient grounds to take the matter further (to court) so concluded they

had to settle the claim on the best possible terms, on a 'without prejudice' basis, which would mean Mrs M could seek independent advice or issue proceedings to recover her losses.

While Soteria confirmed their decision to hold Mrs M at fault for the accident, they accepted there were times they could have pursued the other party more and they hadn't responded to Mrs M on several occasions. They apologised and awarded £250 compensation (later increased to £350).

Soteria subsequently told Mrs M legal advice they'd had indicated the prospects of successfully pursuing the matter through the courts weren't in their favour, as the third party had more evidence about the accident. There was a risk the court would accept the third party evidence, including the witness statement. While Soteria would approach the third party insurer and seek a 50:50 shared liability, if they didn't agree Soteria would have to settle on the best possible terms.

Mrs M then complained to this Service. She didn't think Soteria had investigated the witness statement properly, despite her telling them it was false, and they'd relied on it to accept the third party driver's version of events and deem her liable for the accident. She hadn't been provided with an explanation for the length of time taken to produce the statement. She thought Soteria should have challenged the statement more robustly. Being held liable for the accident would mean her next policy renewal might increase – but Soteria hadn't told her what the impact might be.

She wanted Soteria to confirm the accident wouldn't be a factor in assessing the future premiums for her policy and that she wasn't at fault for the accident. She also wanted Soteria to acknowledge they hadn't followed up suggestions she'd made about the matter or responded to her about the suggestions.

Our investigator didn't uphold the complaint. She noted this Service can't change a liability decision made by an insurer, it would be a matter for the courts. Based on the available evidence and information, she didn't think there was reason to discredit the witness statement, despite being received some time after the accident. Even if it was discounted, there was no conclusive evidence to prove either version of events provided by Mrs M or the third party. In the absence of any other evidence, it was Mrs M's version of events against that of the third party, so the claim would have been likely to be settled on a 50:50 shared liability basis – which it subsequently was - which would mean a fault claim recorded against Mrs M. Soteria had sought legal advice on the prospects of challenging the statement (and the third party version of events) in court, but the advice was it would be unlikely to succeed. Soteria settled the claim on a 'without prejudice' basis, so Mrs M would be able to challenge the decision in a court of law should she wish to do so.

Mrs M disagreed with the investigator's view and asked that an ombudsman review the complaint. She didn't think the investigator had considered what she thought was Soteria's handling of the witness statement, which she continued to believe was false and fabricated a version of events which didn't happen. She'd challenged the statement with Soteria several times, which she thought Soteria accepted before she'd had the opportunity to challenge it and without having access to her earlier written statement. Had it been available – two months before the witness statement was produced – they may not have come to the same decision. She thought having a third party vehicle run into the back of her vehicle would usually mean the third party vehicle would be held at fault for an accident.

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.

My role here is to decide whether Soteria have acted fairly towards Mrs M. It isn't to determine liability in the circumstances of the case or to conclude on the veracity of the witness statement (or the third party version of events).

The key issues in Mrs M's complaint are, firstly, whether Soteria acted fairly in deeming Mrs M at fault for the accident (on the basis of liability ultimately being split 50:50). Mrs M says they relied on a witness statement from the third party she says is false, when they should have challenged it more robustly. Mrs M is also unhappy at Soteria's lack of communication with her and failing to acknowledge or respond to emails. Soteria say they took legal advice on whether they could challenge the third party version of what happened, including the witness statement, but don't consider they would be able to successfully, were the matter to go to court. Reaching 50:50 split liability was the best they could do in the circumstances where Mrs M and the third party provided differing versions of what happened.

A second issue is the way Soteria handled the claim, including their communication and engagement with Mrs M.

On the first issue, I've looked at the information and evidence available. Soteria's final responses and subsequent responses set out the basis for their decision to hold Mrs M at fault for the accident (recording the claim as a fault claim). From correspondence between Soteria and the third party insurer, I can see they initially held the third party responsible when Mrs M first notified them of the accident and the circumstances, and subsequently sought recovery of the costs of repairing Mr M's vehicle as well as follow up when no response was received.

But I can also see the third party insurer contacted Soteria a week after the accident holding Mrs M responsible, as the third party said she reversed into their vehicle while allowing the bus she was in the process of overtaking to pull out. While the two versions of events differ, both indicate the presence of a bus in front of Mrs M that was pulling out.

I've also noted the witness statement, dated December 2021, describing the circumstances of the accident, stating Mrs M attempted to overtake the bus as it was pulling out, then stopping to avoid oncoming traffic and reversing into the third party vehicle. While Mrs M strongly believes the statement was false, the evidence from Soteria indicates they were prepared to investigate it – but weren't able to because the third party insurer wouldn't provide further details of the witness and Soteria wouldn't be able to prove the statement was false (and that the witness wasn't at the scene of the accident).

Soteria continued to correspond with the third party insurer, before writing to Mrs M in June 2022 saying it wouldn't be possible to defend liability due to the circumstances and the witness statement holding Mrs M at fault. They added they had to deal with the issue on the best possible terms and had to deal with the third party claim in full (although it seems the third party didn't make a claim on their policy).

I've also seen Soteria referred the issue to their legal advisors and – although it took some time to obtain a response – their view was that it would be difficult to defend liability should the matter be pursued through to the courts. I again recognise Mrs M feels very strongly the witness statement was false, but the indications were that the witness was prepared to appear in court. And the third party insurer were content to use the statement in support of the version of events provided by the third party shortly after the accident.

I've also noted the third party insurer eventually agreed to settle the liability on the basis of a 50:50 split, which is what Soteria had sought given the differing accounts of what happened.

As a 50:50 split, the claim would still be recorded as a fault claim against Mrs M – and would be likely to be similarly recorded by the third party insurer against the third party driver – because Soteria weren't able to recover all of their outlay on the claim.

Given the differing version of events – even before the witness statement – and there being no other evidence to corroborate or support either version of events (such as CCTV footage, dashcam evidence from either vehicle, or other independent witness) then it was reasonable for Soteria to seek a split of liability for the accident. In the event, a 50:50 split of liability was agreed by the third party insurer.

Looking at these circumstances, picking up one of the points raised by Mrs M, I don't think Soteria would have come to a different decision on liability had they had her statement earlier (or hadn't misplaced it, as she says) as they knew from the outset Mrs M maintained the third party vehicle ran into the back of her vehicle, and the third party said she reversed into them. In the circumstances, even had the witness statement been discounted, the differing versions of the accident would still have been present, with no other independent evidence available.

Given the differing version of events, then the presumption of a vehicle running into the back of Mrs M's vehicle meaning the other vehicle being at fault wouldn't apply. And while I haven't seen this specifically referred to in the evidence and information available, I think it likely Soteria considered the uncertain prospects of pursuing matters to court against the cost of doing so, compared to the outlay they incurred in repairing Mrs M's vehicle.

Taking all these factors into account, I've concluded Soteria acted fairly and reasonably in deeming the claim to be a fault claim against Mrs M, on the basis of the eventual split of liability on a 50:50 basis.

Turning to the second issue, Soteria have acknowledged shortcomings in their standard of service in their final responses. In terms of their responsiveness and communication with Mrs M, from the correspondence between them and Mrs M, and between them and the third party insurer, it's clear it took a significant amount of time to obtain their legal advice and to arrive at a 50:50 split of liability with the third party insurer. Partly this was due to awaiting responses from the third party insurer, who were also seeking an admission of liability for the accident. I can't reasonably hold Soteria responsible for the actions of the third party insurer or the delays they caused, nor for their refusal to provide further details about the witness to enable Soteria to further investigate the witness [statement].

But it's clear the process took a significant length of time from the date of the accident through to the outcome of split liability, and Soteria weren't as proactive communicating with Mrs M and updating her on the position and progress with the claim and determining liability as they could have been – even though I think the outcome was fair and reasonable. I think this caused Mrs M significant distress and inconvenience.

Considering this against the published guidelines from this Service about awards for distress and inconvenience, in the circumstances of this case, I think £350 compensation is fair and reasonable. My understanding is that Soteria have already paid this sum by cheque, so I won't be asking them to take any further action.

My final decision

For the reasons set out above, it's my final decision not to uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 13 May 2024.

Paul King
Ombudsman