

The complaint

Mrs S says U K Insurance Limited ('UKI') wrongly held her at fault for an accident when she made a claim on her motor insurance policy and provided poor service to her.

What happened

Mrs S says her car was stationary at a junction whilst she waited to turn right onto a main road. She says a car turning right into the side road she was on cut the corner and hit the front driver's side of her car. The other driver said Mrs S had emerged from the side road as she was partway through turning into it and Mrs S's car hit her rear driver's side door.

UKI proposed settling the claim with liability split equally. But the other insurer then produced a witness statement from a passenger, and UKI said it had no option but to accept full liability. Mrs S said the witness's statement (from the other driver's 10-year-old son) shouldn't have been relied on. But UKI said passengers (of any age) were accepted as valid witnesses in the part of the UK where the accident took place. Mrs S said she'd sustained a hand injury in the accident, and she didn't renew her policy in July 2023 as the premium had risen so substantially. She said it was hard to find other insurance at a reasonable price. And she said she'd paid extra for legal cover, yet her requests for a solicitor were ignored.

In reply to Mrs S's complaint, UKI said it had looked at the photos she'd provided of the damage to her car and the accident location, but that they didn't disprove the account given by the other driver and her witness. And it pointed out that the legal protection cover Mrs S had bought only covered *uninsured* losses, and then only if the other party was held at fault.

After speaking to Mrs S, UKI issued a follow up letter clarifying that the limited legal cover she'd bought could only be used for costs not covered by the main policy – such as loss of earnings. In effect, it said the cover couldn't be used to 'fight her corner' if she didn't accept UKI's view on liability. It said had it thought there was a fair chance of defending the claim in court, it would have paid for the legal costs involved in that – but it didn't think there was a reasonable chance. UKI accepted that Mrs S had been on hold for too long when calling it and that it hadn't explained to her in a way she could understand why her request for legal help wasn't valid. It offered her £75 compensation for those issues.

One of our investigators reviewed Mrs S's complaint. He thought £75 compensation was reasonable to cover the long call waiting times and the poor communication issue. He said we don't decide which party is liable for an accident; we look at whether an insurer investigated a claim properly. In his opinion, UKI had done that and had used its discretion on how to settle the claim reasonably. He said it wouldn't have taken legal action even *before* it was given the witness's statement, as it thought an equal split on liability was fair at that time. He also said Mrs S's legal cover wasn't for defending a claim if UKI decided not to.

In response, Mrs S said she'd had a letter from the other driver's solicitors and still needed legal advice. In her opinion, she was entitled to a court hearing under human rights legislation. She said she hadn't been told what UKI had paid the other party and that she

was still in pain from the injury to her hand, but nothing had been done about that. She also said she wanted copies of some of the call recordings between her and UKI.

The investigator said UKI would have disputed liability had it thought it had a fair chance of doing so successfully, not only in Mrs S's interests, but because it may then have avoided paying the other driver's costs. He told Mrs S the sum UKI had paid for the other driver's costs. He said Mrs S would have to fund her own legal charges should she want to dispute liability. He said he didn't think the call recordings she wanted were needed in order for him to deal with her complaint properly. And he pointed out that although Mrs S was very upset about the other driver's behaviour, we could only look at how UKI had acted.

As there was no agreement, the complaint was passed to me for review.

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.

In this decision I won't refer to every point raised in the correspondence between Mrs S, UKI, and the investigator. Instead, I'll concentrate on what I think are the main issues. But I've taken into account everything the parties have said in reaching my conclusions.

Liability

As the investigator has already explained, our remit is limited to reviewing how an insurer dealt with a liability dispute and whether it reached a reasonable decision, based on the available evidence.

In this case, UKI concluded initially that as each driver blamed the other – and both versions of events were plausible – the best way to deal with the issue was to propose split liability. I think most insurers would have acted the same way. When the other insurer produced a witness statement, I think it was reasonable for UKI to conclude that it had no choice but to take it into account. I think it was also reasonable for it then to decide that it would have to accept full liability for the claim. Mrs S is very upset about that, first of all because she believes the other driver was entirely responsible for the accident (and got away with lying about it). Secondly, she thinks the witness's evidence is false, as he couldn't have seen what happened, so he must have been told what to say by his mother.

Mrs S's assertions and suspicions may be true, but she has no way of proving them, and UKI had to make a decision based on the available evidence. Insurers don't settle claims unless they think they don't have an option, as it's not in their interests. As far as I can see, it was reasonable for UKI to conclude that there was no basis on which it could successfully challenge the other driver's version of events, supported as it was by the witness's statement. In other parts of the UK, a passenger's evidence (regardless of age) isn't accepted as independent evidence, but unfortunately that wasn't the case here.

Mrs S is mistaken in thinking she had the right to a court hearing about liability. The policy gives UKI absolute discretion to decide how to deal with all claims. Mrs S agreed to that when she bought the policy – and it's one of the terms and conditions set out by all motor insurers. In the circumstances here, I can't say UKI acted unreasonably by accepting that Mrs S was at fault and settling the claim, rather than going to court to dispute liability.

Legal assistance

UKI's claims notes state that Mrs S asked for legal assistance in May 2023, and that UKI explained to her then (and again in June 2023) what the extra cover she'd bought was for. There's nothing to show Mrs S asked constantly for legal help. But UKI acknowledged in its reply to her complaint that it didn't explain the facts to her clearly until that point, so the lack of legal help remained an issue for her.

As Mrs S believed she was being denied the cover she'd paid for, and she couldn't understand why, it must have been very frustrating for her. But the extra cover couldn't ever have been used to assist her in disputing liability, so she hasn't lost out. 'Add-on' legal cover bought by policy holders assists with issues not covered by the policy. And it only applies if the other driver is held at fault. If that's the case, it can be used (for example) to recover from that driver the excess a consumer has had to pay to get their car repaired. In this case, as the other driver wasn't held at fault, the add-on legal cover couldn't be used.

Mrs S was told UKI would pay the legal costs if the claim was defended, which may have caused her some confusion. Mrs S didn't pay extra for that potential legal cover - but the legal support available under the policy is only provided if an insurer thinks there's a reasonable prospect of it successfully defending a claim. As set out above, UKI didn't think it could do that. Consequently, I don't think it acted unreasonably in relation to Mrs S's requests for legal help and action, although its explanations could have been better.

Other issues

Mrs S was shocked by the amount of the increase in the renewal quote from UKI and by the quotes she got from other insurers. Not all of the increase would have been due to the claim – however, it was recent, and the impact of a claim on premiums is often significant, although its effect reduces over time. But even if the claim had been settled with split liability, Mrs S would still have had a 'fault' claim on her record, so her premium would still have risen in July 2023. The only way to avoid it would have been to show the other driver was wholly at fault for the accident. I think that would have been very hard to do. And some insurers increase the premium based on an incident, even if a consumer isn't at fault.

Although Mrs S sustained an injury in the accident, as she was held fully liable, she can't make a personal injury claim against the other driver. In effect, her actions caused her own injury. Mrs S can take legal action (at her own expense) if she thinks she'll be able to prove that the other driver caused the accident and is therefore also responsible for her injury. She told us she'd be getting legal advice, which I think would be helpful to her.

Finally, I can see why Mrs S is worried about the content of the letter she got from the other driver's solicitors. She didn't raise it with UKI as part of this complaint. But the file notes show that she reported her concerns to UKI on 9 November 2023 and that UKI told her on 15 November 2023 that the matter would be passed to the claims team. If Mrs S hasn't heard further from UKI about it since then, it's open to her to make a formal complaint.

In summary

Mrs S genuinely believes she's been treated badly, and I think she has suffered due to the accident and its aftermath. But much of her distress is focused on the behaviour of the other driver, which isn't something we can deal with. I'm very sorry that Mrs S's injury is causing her ongoing pain, and I hope she makes a full recovery soon. I know she feels strongly that she was let down by UKI, and I think the main issues for her are its liability decision and not being provided with legal help by it. But as I've set out above, I don't think UKI acted unreasonably in relation to either of those issues.

In my opinion, the £75 compensation UKI offered Mrs S for the long call waiting times and its poor communication was adequate. So despite my sympathy for her, given the situation she's found herself in, I can't uphold her complaint.

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 Mrs S to accept or reject my decision before 28 May 2024.

Susan Ewins

Ombudsman