

The complaint

Ms B and Mr S complain about U K Insurance Limited's ("UKI") liability decision when handling a claim under their motor insurance policy.

Ms B has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any actions taken, or comments made, by either Ms B or Mr S as "Ms B" throughout the decision.

What happened

Ms B was involved in a road traffic accident for which, she says, the third party was fully responsible. Ms B says UKI then settled the claim on a 50/50 split liability basis without consulting her. Ms B says had she been made aware of UKI's intention to settle liability in this way, she would've pushed for them to hold the third-party fully responsible. Ms B complained about UKI's decision to settle the claim on these terms and said she was concerned about the impact this would have on her future premiums.

UKI responded and explained they'd reviewed all information relevant to the claim, and this included claim notes, correspondence with the Third-Party Insurer ("TPI") and CCTV footage. They said the CCTV footage showed Ms B and the third-party were equally at fault as they both had a duty of care while performing their respective manoeuvres. UKI said, on this basis, the decision was made to settle the claim on a split liability basis of 50/50. They said, although Ms B had been informed of this decision, she hadn't been consulted prior to the decision – and they should've engaged with her prior to making their decision to avoid any confusion and allow Ms B an opportunity to raise any concerns.

UKI said, after Ms B raised a concern, they referred the claim to a solicitor's firm who confirmed the best-case scenario was an 80/20 liability split in Ms B's favour, but there was no possibility of it being settled as non-fault. UKI said, as they'd already settled the claim, they couldn't now renegotiate their position on liability. UKI said, a split liability outcome, despite the ratio of liability on each side, wouldn't change the impact any split liability claim would have on a policy premium at renewal. They said, it would however impact the excess refunded to a customer and how much they would have to pay on a claim. They said as Ms B had paid an excess of £350, this meant £175 would be refunded on the basis of the 50/50 split liability. But, as a gesture of goodwill, they'd arranged to refund an additional £105 of the excess as this would represent an 80/20 split liability outcome. UKI said they'd also sent £50 compensation to Ms B for not contacting her prior to the liability decision.

Our investigator looked into things for Ms B. During the investigation UKI offered an additional £100 compensation, but Ms B declined this. Our investigator didn't think UKI had acted unfairly in settling the claim, but they agreed UKI had made an error in not discussing the claim decision with Ms B in advance. Our investigator thought the offer of £150 compensation and a refund of 80% of the excess was fair. Ms B disagreed so the matter has come to me for a 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.

Having done so, I've decided UKI's offer is a fair way to resolve matters. I understand Ms B and Mr S will be disappointed by this but I'll explain why I have made this decision.

My role requires me to say how a complaint should be settled quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute. The key dispute here relates to UKI's decision on liability and to hold Ms B partly responsible for the accident.

My starting point is Ms B's policy booklet. This sets out the terms and conditions and explains that UKI are entitled to, *"Take over and carry out the investigation, defence or settlement of any claim in your name, or in the name of any other person covered by this policy."*

When an accident occurs, it's the insurer who'll decide how the claim should be settled - this includes determining which party was at fault. An insurer might choose to accept liability, propose or agree to split liability, or choose to defend any allegation of liability. While this decision rests with an insurer, and it's not the role of our service to decide who is at fault for an accident, we can look to see whether an insurer has handled the claim in a fair and reasonable manner. So, although the terms and conditions allow UKI to decide liability in the claim, I've looked into how and why UKI reached their decision and the evidence and arguments they considered before making a decision.

The information shows UKI viewed the CCTV footage which recorded the accident and also took into account both Ms B's and the third party's version of events. At this point UKI decided the claim should be settled on a 50/50 split liability basis. But following Ms B challenging this decision, UKI referred the claim to their solicitors for a second opinion. I've seen the solicitors' advice and, while this refers to case law to support a liability split of 80/20 in Ms B's favour, it does make it clear that ultimately the claim would've settled on a split liability basis.

Where there's a dispute involving liability, insurers will often appoint solicitors to provide an opinion – and that's what UKI have done here. I think that's a reasonable step for UKI to have taken given Ms B had challenged their decision and she was also firmly of the view she wasn't responsible for the accident. Given that the solicitors' considered the relevant evidence here relating to the claim, they've referred to case law to support their opinion on split liability and they don't believe the claim would settle as non-fault for Ms B, I can't say UKI have acted unfairly in settling the claim on the basis of split liability.

I acknowledge Ms B says, had she been consulted prior to UKI reaching their decision, she would've asked them to challenge the third-party's account of the accident and pushed for them to maintain a non-fault stance on her behalf. I acknowledge Ms B maintains she wasn't at fault, but as I've mentioned above, the policy terms and conditions allow UKI to settle liability.

I note Ms B also says she wished to pursue this matter through a legal route. I acknowledge Ms B's points here and I understand she would've wanted to proceed through the legal route to determine liability here, but the policy terms and conditions say UKI are entitled to start any legal proceedings. Given that this decision rests with UKI, and the information in this case shows they did take legal advice which endorsed a split liability settlement, I can't say UKI acted unreasonably in not pursuing the matter through legal channels.

The key facts about the part of the complaint relating to UKI's failure to consult with Ms B prior to making a decision aren't in dispute. UKI accept they got things wrong by not engaging with Ms B in advance of making their decision and to allow her an opportunity to raise any concerns. The only issue I have to decide is whether their offer to put things right is fair and reasonable in the circumstances.

I think it's right that UKI should compensate Ms B for the upset and frustration caused. To help decide what a fair and reasonable level of compensation should be, I've looked at the error by UKI and the impact it has had.

It's clear from the moment Ms B notified UKI of the accident, she continued to maintain she wasn't at fault. So, I do understand why it was upsetting and frustrating for her to then find out UKI had reached a decision but without at least consulting her to discuss their thoughts and provide an opportunity to raise any dispute.

Had Ms B been presented with this opportunity, I believe she would most likely have disputed any fault. But even if that were the case, I can't say the outcome would've been any different. I say this because, when Ms B did later challenge UKI's decision, they instructed a solicitor's firm for advice. And that advice was that the claim would've settled on a split liability basis in any event. So, I think it's likely that, even if Ms B had challenged UKI's decision prior to settling her claim, they would likely have taken advice from their solicitor's firm, and I've seen nothing to suggest the advice wouldn't have been the same. And that being the case, I'm not persuaded UKI would've challenged the TPI by maintaining a non-fault stance on behalf of Ms B or decided to pursue the matter through the court.

So, I can't say there has been any wider or lasting impact to Ms B beyond the upset and frustration caused when UKI did later notify her about the claim decision. I acknowledge Ms B has concerns about the impact of the claim settlement on her future premiums, but that's as a result of the decision to settle the claim on a split liability basis. And given that I haven't upheld this part of the complaint, I can't hold UKI responsible for any impact this might have on Ms B's future premiums.

So, in the circumstances of this case, I think the total compensation of £150 offered by UKI is fair and reasonable here, and reflects the upset and frustration caused to Ms B. UKI have also accepted the solicitor's advice on an 80/20 liability split and have accordingly offered to refund 80% of the excess paid by Ms B – and I think that's fair and reasonable.

My final decision

U K Insurance Limited have already made an offer to pay £150 compensation to settle the complaint, and I think this offer is fair in all the circumstances. So my decision is that U K Insurance Limited should pay Ms B and Mr S £150, if they haven't done so already.

U K Insurance Limited have also already made an offer to refund 80% of the excess paid by Ms B and Mr S. So if the excess has been paid by Ms B and Mr S, then U K Insurance Limited should refund 80% of this, if they haven't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr S to accept or reject my decision before 5 July 2024.

Paviter Dhaddy
Ombudsman