

The complaint

Miss O complains that Mulsanne Insurance Company Limited accepted liability for a car accident she was in, without obtaining or reviewing CCTV footage.

What happened

Miss O was in a car accident in August 2021 and reported a claim to Mulsanne – her insurer. Miss O said the other driver was at fault, but they said Miss O ran a red light.

Mulsanne attempted to obtain CCTV from the local council, but on two occasions they were unable to view it once received because of formatting issues. During the investigation, Mulsanne says an independent witness came forward corroborating that Miss O went through a red light. Based on this Mulsanne accepted liability on behalf of Miss O.

Miss O is unhappy that the CCTV wasn't reviewed. She also says Mulsanne have been difficult to communicate with throughout and have caused delays, which has been distressing.

One of our investigators considered the complaint and agreed it should be upheld. She said she could see that Mulsanne had been progressing the claim and making reasonable attempts to obtain the CCTV, but that its communication had been poor. She also said it caused some avoidable delays in having the car inspected. She initially recommended £200 compensation, but then increased this to £250 when she discovered Mulsanne had already previously offered the higher figure.

In terms of the liability decision, our investigator said Mulsanne hadn't provided evidence of the witness statement, despite her having requested it on several occasions. So, because we'd seen no basis for the decision, our investigator said it was unfair and that Mulsanne needed to reconsider how the claim was recorded.

Mulsanne accepted our investigator's assessment, but Miss O didn't. So, as no agreement had been reached, the complaint was passed to me to decide.

After the complaint was passed to me, Mulsanne informed us that Miss O's claim was still open as she had continued to dispute liability. Mulsanne said it had instructed solicitors to act on Miss O's behalf and it provided a copy of the witness statement.

Given the circumstances of the complaint had moved on since our investigator's assessment, I issued a provisional decision setting out my thoughts on the complaint – to give the parties the chance to respond before I reached my final decision. Here's what I said:

"What I've provisionally 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.

The circumstances of the complaint I'm considering are slightly different to those considered by our investigator. Because of this, I'm issuing a provisional decision, to give the parties the opportunity to respond before I reach my final decision.

I appreciate Miss O feels strongly that Mulsanne needed to view the CCTV before reaching its decision on liability. But I can see it was making reasonable attempts to obtain and view this throughout the claim. I can't reasonably hold it at fault for the council providing it twice in an unviewable format.

I'd expect Mulsanne to carry out a suitably detailed investigation before deciding liability, and this might include viewing CCTV where possible. But I don't think it would be fair to say that Mulsanne cannot deem its policyholder at fault without viewing CCTV, assuming there is sufficiently persuasive alternative evidence to allow it to reach a reasonable decision – such as an independent witness statement.

Unlike our investigator, I've now seen a copy of the witness statement. It goes into some detail about why the witness deemed Miss O to be at fault and includes supporting diagrams. So, given this witness statement, and the fact Mulsanne wasn't able to view the CCTV, it could potentially be argued that the decision to accept liability could have been a reasonable one.

However, the above is academic because I'm now aware that Mulsanne hasn't actually accepted liability – which was the basis of Miss O's initial complaint. Instead Mulsanne continues to dispute liability on Miss O's behalf via a solicitor which it has appointed. This does mean the claim currently remains open, which will be impacting Miss O's no claims discount (NCD) and the cost of her premiums. But given Miss O feels strongly that she wasn't at fault, and doesn't want Mulsanne to accept liability, this is ultimately in her interest. So, as things stand, I think Mulsanne is dealing with Miss O's claim fairly and reasonably, in light of the circumstances, and so I have no recommendations to make with regard to liability.

Should Miss O have concerns about how the claim and liability dispute continues to progress, she'll need to raise those concerns as a new complaint – and with Mulsanne in the first instance.

In terms of the service Miss O has received, it hasn't been disputed that Mulsanne's communications, during the period of the claim I'm considering, have been poor. Nor that it caused some avoidable delays. I've thought carefully about how Miss O says she's been impacted by these issues. But most of the impact Miss O has described, seems to be the result of the accident, rather than Mulsanne's actions – for example her physical injuries and symptoms.

I can't reasonably hold Mulsanne at fault for the fact the accident happened, or the way this has impacted Miss O. I need to consider Mulsanne's actions, and how they have added avoidable distress and inconvenience to an already distressing situation. Taking everything into account, I think the £250 already offered is enough to fairly compensate Miss O for the impact of the avoidable errors which are solely the fault of Mulsanne."

I asked both sides to send any further evidence or arguments they wanted me to consider within two weeks. After which, I said I'd reach my final decision.

Mulsanne responded to confirm it accepted my provisional findings and had nothing further to add.

Miss O responded to provide further comments and evidence. She provided a copy of her own signed witness statement and said, in summary:

- Numerous matters remain unaddressed
- The areas of damage do not correspond with the other driver's version of events
- Mulsanne has confirmed it has concerns about the third-party's version of events
- The third-party claimed to have children in the car but none were observed at the scene
- Mulsanne requested a witness statement from her which she provided in January 2024, but she's yet to hear anything back about this.

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.

I've also carefully considered the responses to my provisional decision. Having done so, my conclusions remain the same. I'll explain why.

All of Miss O's responses to my provisional decision appear to centre on the liability decision. But while this was the original subject matter of her complaint, I explained in my provisional decision that things have moved on significantly since the complaint was brought to the Financial Ombudsman Service.

The complaint Miss O brought to us was that Mulsanne had carried out an inadequate investigation and had unfairly accepted fault for the accident. But since the complaint has been with us, Mulsanne has confirmed that the claim remains open, and it is still disputing liability with the third-party, via solicitors it has appointed to represent Miss O. This means that all the comments Miss O has provided are relevant to that ongoing liability dispute, rather than Mulsanne's earlier (and now reversed) decision to accept fault.

In my provisional decision I explained that I wouldn't necessarily conclude it was unfair to accept liability without having sight of the CCTV in the circumstances, particularly given that a third-party witness statement, holding Miss O at fault, became available.

Miss O has provided additional comments and evidence to dispute the content of the witness statement. And if I were still deciding whether Mulsanne's decision to accept liability was fair, I would of course be carefully considering this information before arriving at my decision. But, as explained in my provisional decision, things have moved on significantly since the complaint was brought to us. Mulsanne has since confirmed it has concerns about the third-party claim (presumably due to some of the information provided by Miss O) and so has appointed solicitors to represent Miss O to continue the liability dispute. This means the claim remains open, investigations are still ongoing and no decision on liability has been made. So, I'm unable to make a decision on the fairness of Mulsanne's liability decision, under this complaint, because liability has yet to be decided.

Should Miss O have concerns about the way the liability investigations/negotiations are progressing, she'd need to raise those concerns as a new complaint and with Mulsanne in the first instance. Should she remain unhappy with Mulsanne's final response to this new, hypothetical complaint, she'd be able to refer her complaint to the Financial Ombudsman Service subject to our normal rules and timescales. And the same would be true if Miss O ends up dissatisfied with the liability decision which is ultimately reached.

In my provisional decision I agreed Miss O's claim hadn't been well handled. But I also agreed that the £250 compensation Mulsanne already offered was a fair way to resolve those service issues. None of Miss O's comments in response to my provisional decision have changed my thoughts on this.

My final decision

Mulsanne Insurance Company Limited has already made an offer to pay £250 to settle the complaint and I think this offer is fair in all the circumstances.

So, my provisional decision is that Mulsanne Insurance Company Limited should pay Miss O £250 – if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 25 June 2024.

Adam Golding
Ombudsman