

The complaint

Mr M complains about how U K Insurance Limited trading as Privilege (“UKI”) has handled his motor insurance claim.

What happened

In early 2023, Mr M made a claim under his motor insurance policy with UK after his car was damaged in an accident involving another vehicle. Mr M’s car was hit in the rear by a large lorry while he was on a roundabout. Mr M thought the third-party driver was responsible for the accident. But the third-party insurer disputed liability.

When Mr M’s policy came up for renewal in June 2023, liability hadn’t yet been agreed. Mr M was unhappy to find that his premium was significantly higher than the previous year.

In November 2023, Mr M raised a complaint about a delay in the progression of his claim and poor communication. UKI told Mr M that it wasn’t going to take his case to court as it considered Mr M to be partly responsible for the accident. Mr M was unhappy with UKI’s decision. He felt he was entitled to have his case considered by a solicitor as his policy included legal cover.

In response to Mr M’s complaint, UKI acknowledged there had been a delay in progressing his claim as well as some poor communication. It paid him a total of £175 for its poor service. UKI said that Mr M’s legal cover didn’t mean it would put him in contact with its solicitors. It said its claims team department had reviewed the incident and had found liability to be split based on evidence. Its decision wasn’t because of the Highway Code rule Mr M had been provided with.

Mr M remained unhappy and asked our service to consider his concerns. UKI then offered to pay Mr M a further £150 for the delay and poor service. However, Mr M rejected the offer. He said his insurance premium rose from £330 to £822 due to the incident. He was concerned that further increases would result in him being forced off the road. He said all he wanted was the chance to retain his no claims bonus, but no one would listen to him.

Our investigator looked into Mr M’s concerns. He didn’t think UKI’s decision to accept liability for the accident was unfair. And he thought UKI’s offer of compensation was reasonable.

Mr M disagreed with our investigator’s outcome. He said he’d spoken to UKI a number of times and was passed around to different agents. He was told rule 221 of the Highway Code was the reason UKI would need to accept liability each time. He believed the third-party driver was going fast down the hill and had caused the accident.

Mr M said the third-party driver had told him he had a dashcam and he felt UKI should have questioned their insurer or lorry company about this. It should also have asked for the tachograph data and how many lorries in the fleet had dashcams fitted. He also provided some photographs that were taken at the scene of the accident, as well as some images of his damaged car.

Mr M disputed what the third-party insurer had said about the lorry being established on the roundabout when Mr M entered it. He said he didn't have sight nor sound of the lorry until it hit him from the rear. He also commented that UKI had delayed requesting dashcam footage for 12 months and it was the fact he'd asked the Ombudsman Service to look into this that had made it take action.

As Mr M disagrees with our investigator's outcome, his complaint has been 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.

Having done so, I've reached broadly the same conclusions as our investigator. I'll explain why.

I've considered everything Mr M has told our service, but I'll be keeping my findings to what I believe to be the crux of his complaint. I wish to reassure Mr M I've read and considered everything he has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

It's not my role, or the role of this service, to decide who was responsible for the accident. What I've needed to decide is whether or not UKI has acted fairly and reasonably and in line with the policy's terms and conditions.

The policy's terms and conditions say:

"When we can act on your behalf.

We're entitled to do either of the following:

- *Take over and carry out the negotiation, defence or settlement of any claim in your name, or in the name of any other person covered by this policy.*
- *Start legal proceedings in your name, or in the name of any other person connected to this policy. This can be for your benefit or our own benefit."*

Similar provisions are found in most motor insurance policies, so I don't find this unusual. It means UKI is entitled to settle a claim how it chooses. So, it was up to UKI to decide whether or not to take legal action against the third party to try to recover its costs.

UKI says it decided to settle the claim the way it did based on the sketch of the incident provided by Mr M, which it says proves Mr M was at fault. It says this confirms the third party's version of events which was that they were already established on the roundabout. Mr M wouldn't have had right of way. If Mr M had exited as the third party was proceeding around the roundabout, and pulled out in front of the third party, then the damage would be to the rear, and this wouldn't necessarily mean the third party was at fault. Mr M had a duty of care to ensure it was safe to exit from where he was.

Mr M strongly disputes being in any way responsible for the accident. He refutes what the third party lorry driver has said about already established on the roundabout when he entered it. He says he didn't see the lorry until it hit the rear of his car.

I appreciate it's Mr M's belief that the lorry driver may have been driving fast. But there doesn't appear to be any evidence to substantiate this. Having reviewed Mr M's sketch along with an aerial image of the roundabout, I can see why UKI reached the conclusion that Mr M was at least partly at fault for the accident.

I understand Mr M feels UKI should have been more proactive in seeking evidence from the third-party insurer such as dashcam footage. It's unclear from the information UKI has provided whether it specifically asked for this prior to January 2024. But from what I can see, the third-party insurer didn't provide other information UKI had requested throughout the claim. So, I don't think it would have made a difference if UKI had specifically requested dashcam footage sooner.

UKI has noted that the third-party insurer said its client wasn't claiming for damage to their vehicle and it did not have to prove anything. The onus was on UKI to prove that the third party was responsible.

I appreciate Mr M's frustration that UKI decided not to take legal action against the third party. But the terms of the policy allow UKI to decide whether or not to start legal proceedings. As an insurer, UKI is likely to have experience of how a court would view the evidence that was available. With this in mind, I don't think UKI's decision was unreasonable.

When he brought his complaint to our service, Mr M said UKI was refusing to honour the legal protection he'd purchased with his motor insurance policy. I can see that Mr M's policy includes motor legal cover. This section of the policy provides cover in the event of a road accident where someone else is to blame. The terms and conditions say UKI will pay the costs to help the policyholder claim their uninsured losses from the person who was to blame for the accident. Having this cover doesn't mean Mr M is entitled to have his motor insurance claim file passed on to solicitors to take legal action regarding insured losses. Nor does it entitle Mr M to a meeting or conversation with UKI's solicitors about the liability issue.

Mr M has also complained about some poor service from UKI in relation to the handling of his claim. He says he was pursuing UKI on a monthly basis for around a year and didn't receive promised call backs on many occasions.

UKI has acknowledged being responsible for delays in progressing Mr M's claim as well as some poor communication with him. It's offered to pay Mr M a further £150 on top of the £175 it's already paid him to compensate him for this. £325 is in the range of what our service might typically award if a business's actions have caused a consumer considerable distress and/or significant inconvenience. So, I think this reasonably recognises the impact of UKI's poor service on Mr M.

I appreciate my answer will be disappointing for Mr M, who has commented that he may not be able to afford to continue to drive because of the increase in his insurance premiums. But I'm satisfied that UKI has acted fairly and in line with the policy's terms and conditions. So, while I empathise with Mr M, I don't require UKI to do anything further in relation to his claim.

Putting things right

UKI should pay Mr M the additional £150 it offered him after he brought his complaint to our service if it has not already done so.

My final decision

For the reasons I've explained, I uphold Mr M's complaint and direct U K Insurance Limited to put things right by doing as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 September 2024.

Anne Muscroft
Ombudsman