

The complaint

Mr W has complained that his commercial vehicle insurer, Mulsanne Insurance Company Limited ('Mulsanne') has kept a claim on his policy open, which has impacted his premiums at renewal. He wants the claim to be closed.

What happened

In August 2023, Mr W was involved in a road traffic accident with a third party which he says he reported to Mulsanne on the same evening. He said this was only for information purposes as he didn't want to claim under his policy. He said the accident happened at low speed and neither of the drivers was injured.

The third party contacted Mulsanne about the claim around the middle of September 2023, and Mulsanne got in touch with Mr W a week or so later to get his version of events. Mr W said the other party collided with the rear of his vehicle twice and that the other party had been in the wrong lane on the roundabout. Mr W didn't feel he was at fault for the accident. He said his van only had a minor dent, so he didn't want to claim under his policy. He also provided some photos of the damage.

Mulsanne responded a week or so later and said it would dispute liability with the third-party insurers.

Mulsanne wrote to Mr W again in January 2024 to say that the third party was maintaining its liability stance and holding him at fault. It asked Mr W for a statement and diagram which Mr W provided around ten days later.

Mr W's policy renewed in January 2024 and he says when he got his renewal documents, he noticed that the accident had been noted as a fault claim against him and that his premium had trebled. He wasn't happy about this and complained. He said that Mulsanne has blamed him for the accident and that this impacted his no claims bonus (NCB) as well as his premium and that he didn't wish to renew his policy.

Mulsanne continued to chase the third party and said that it maintained that Mr W wasn't at fault for the accident.

Mulsanne responded to Mr W's complaint in March 2024. It said it appreciated that this was a frustrating time for him as, having an open claim was impacting his premiums and his NCB. But it said liability can take some time to settle. It said it would continue to dispute liability on Mr W's behalf and that it had provided his evidence (his statement and diagram) to the third-party insurers. It said it followed its processes correctly and was acting in line with its terms and conditions and was, therefore, unable to uphold the complaint.

Mr W didn't agree and brought his complaint to us. He said that he didn't agree with Mulsanne's actions of blaming him for the accident. He said he asked Mulsanne to close the claim as it clearly will never be resolved and as he is not making a claim. He said he wanted his NCB reinstated and the allegations that he hit a third party to be removed from his record.

One of our investigators reviewed the complaint. He thought there was a delay in Mulsanne requesting Mr W's statement and diagram which Mulsanne agreed with and said this should have been requested when it spoke to Mr W in September 2023. But it said regardless of this, the dispute would have still been outstanding. It said it appointed solicitors to defend liability. Our investigator thought Mulsanne should pay Mr W £200 compensation for the delay, which Mulsanne accepted.

Our investigator didn't think that Mulsanne's actions in defending the claim were unfair or unreasonable. He also thought it was standard industry practice that the claim would stay open while liability was still in dispute. He noted Mr W's frustration as an open claim would need to be recorded as a fault claim which would in turn impact Mr W's premiums. Our investigator added that if the claim is settled in Mr W's favour, he will be able to ask Mulsanne to recalculate his premium based on the claim being non-fault.

Mulsanne accepted our investigator's view but Mr W didn't. He said he would only accept confirmation that the fault claim against him was removed from his record and the case closed showing him as 100% innocent. He said he would like written confirmation of this.

Our investigator didn't change his view. He said that while liability was in dispute, he couldn't ask Mulsanne to close the claim.

Mr W still disagreed and said he didn't want the £200 awarded by our investigator. As the matter was not resolved, it was 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.

Mr W's policy, like most motor insurance policies, contains a term which says that Mulsanne is entitled to take over and conduct the defence or settlement of any claim in the name of any person covered by the policy. This isn't an unusual term, and we think Mulsanne can rely on it as long as it is acting fairly and reasonably in doing so.

It is not uncommon for there to be liability disputes in motor insurance claims, and this happens even in cases where it is seemingly clear who the at-fault party is. If an insurer, after carrying out its investigations, determines that its policyholder wasn't the at-fault party it is entitled to defend a claim made against their policy.

Mr W doesn't believe he was at fault for the accident. Mulsanne has reviewed the circumstances of the accident as well as his evidence and it agrees with him. Mr W doesn't wish to claim under his own policy and this is a decision he is entitled to make. But the third

party does appear to want to make a claim against Mr W's policy and this is something that Mulsanne doesn't really have a choice about. In these situations, if the third party wants to make a claim against another party all that party's insurer can do is either defend the claim or admit liability, depending on the circumstances. And in this case, Mulsanne has decided to defend the third-party claim. In the circumstances I think this is fair and reasonable.

Mr W said he wants Mulsanne to close the claim as he doesn't want to claim for his own damage. I appreciate the argument Mr W is making here, but as there is still an outstanding third-party claim Mulsanne isn't able to close the claim. Had the third party not blamed Mr W for the accident and had it not made a claim against his insurance policy, Mulsanne would likely have closed the claim as "notification only" as Mr W had asked it to. But the third party does wish to claim against Mr W's policy, rightly or wrongly. And as Mulsanne feels such a claim should be defended I think it can't but keep the claim open so it can defend it. So I think its actions in this regard are fair and reasonable.

Mulsanne said that liability disputes can take some time to resolve. I think this can depend on the circumstances of each claim, but I accept that if Mulsanne expects it will receive a potential claim from a third-party it has to be prepared for it and that is why the claim has to remain open. It is standard industry practice for insurers to do so. I don't think it would be fair for me to ask Mulsanne to close the claim if the third party is still pursuing their claim against Mr W.

I should also explain that it is standard industry practice for an open claim to show as a fault claim until it is resolved. So, I don't think Mulsanne has done anything it shouldn't have done in recording this as a fault claim for the time being. I appreciate that Mr W's premiums as well as his NCB have been impacted but for the reasons I have given I don't think Mulsanne's actions have been unfair or unreasonable in the circumstances.

As our investigator said if the third party decides to stop pursuing the claim or if they themselves concede liability, Mulsanne will be able to close the claim as non-fault and update Mr W's record.

I note that Mr W is concerned that liability will never be resolved but I don't expect that Mulsanne will keep the claim open indefinitely. It will be for Mulsanne and perhaps its solicitors to gauge how much longer it will need to keep the claim open for. If, for example, there is no action from the third party for some time or if the third party confirms it won't pursue the claim further, then Mulsanne may decide to close the claim. But this will depend on its interactions with the other insurer and whether there is an indication that the claim is still being pursued. Nevertheless, I'd expect Mulsanne to be actively chasing the third party for updates and to be reviewing the claim as well as keeping Mr W updated.

Mulsanne accepts that it should have obtained all of Mr W's evidence sooner than it did and it has agreed to pay £200 compensation to him for this. It has nevertheless said that even if it had obtained Mr W's statement and diagram in September 2023 rather than January 2024, the dispute would have still been ongoing. I accept Mulsanne's point but I think that it's more likely than not that the overall time it takes for the claim to be concluded will have been shorter had it obtained this evidence sooner. So I think the £200 compensation award made by our investigator is a fair reflection of the distress and inconvenience this may have caused Mr W and I am pleased to note that Mulsanne has agreed to pay it.

I appreciate Mr W will be disappointed with my decision and I accept that this is a very frustrating situation for him. But for the reasons I have given I don't think Mulsanne has acted unfairly or unreasonably in keeping the claim open. I also think that most of the frustration is being caused by the third party deciding to make a claim against Mr W rather than by any of the actions Mulsanne has taken.

My final decision

For the reasons above, I have decided to uphold this complaint in part. Mulsanne Insurance Company Limited must pay Mr W £200 for the distress and inconvenience it caused him by its delays.

Mulsanne Insurance Company Limited must pay the compensation within 28 days of the date of which we tell it Mr W accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

If Mulsanne Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 21 November 2024.

Anastasia Serdari
Ombudsman