

## The complaint

Mr W complains about the liability decision U K Insurance Limited (“UKI”) reached following a claim on his car insurance policy. Mr W is also unhappy with delays and a lack of updates on the claim.

## What happened

In July 2023 while driving his car Mr W was involved in a collision with a third party car. Mr W says he wasn’t at fault because the rear of his car was hit by the third party.

Mr W reported the incident to UKI a few days after it happened and was asked by UKI to complete an accident report form.

In January 2024, UKI wrote to Mr W to inform him it was intending to settle the claim on a 50/50 basis as the insurer of the third party was holding Mr W at fault. UKI said the third party alleged that Mr W had reversed into their car.

Mr W complained that he hadn’t been told earlier about the dispute from the third party. He said that had he known about this sooner, he could have obtained CCTV which would have supported his version of events. Mr W says he still tried to obtain the CCTV, but by this point it had been erased.

UKI said in its final response the terms of the policy gave it discretion on how to settle the claim, and because there was no independent evidence available or any inconsistencies in the third party’s statement a 50/50 settlement was the most favourable outcome it considered to be available. UKI accepted there had been delays on its part though, and in recognition of this it apologised and paid Mr W £275 compensation.

Our investigator didn’t uphold the complaint. He said he thought UKI had acted fairly in how it reached its outcome on liability and because there was no independent evidence, he agreed with UKI a 50/50 settlement was likely the most favourable outcome possible. Our investigator also said that £275 compensation was reasonable for the delays and communication issues on the claim.

After considering all of the evidence, I issued a provisional decision on this complaint to Mr W and UKI on 24 September 2024. In that provisional decision, I said:

*“Our services role isn’t to decide who is liable for a road traffic accident. That’s a matter only the courts can decide in circumstances where liability disputes aren’t resolved informally. My role is to consider whether UKI acted fair and reasonably in how it investigated the claim, and in how it decided it would settle it on a 50/50 basis.*

*The policy terms and conditions permit UKI to decide how it will settle a claim. They say:*

*“We are entitled to:*

*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”*

*Mr W doesn't think UKI handled his claim fairly because he believes it knew about the liability dispute earlier than when it told him, and he believes he was prejudiced by this because had he known about the dispute sooner he could have obtained CCTV which would have proved he wasn't at fault.*

*I've firstly considered if UKI knew about the dispute at an earlier point and didn't inform Mr W.*

*UKI have provided a copy of a letter from representatives of the third party driver dated a couple of days after the incident. This letter clearly holds Mr W fully at fault for the collision and alleges that he had reversed into the third party.*

*UKI's claim notes appear to confirm that it was in receipt of this letter at the point Mr W reported the claim:*

*“FNOL (first notification of loss). Handler determined our stance NF (non fault) on basis that TP (third party) hit PHV (policy holder vehicle) rear. They have also noted they responded to TP Reps, however I don't think this was handled appropriately as we had clearly received allegations from TPR (third party representatives) stating Reported circumstances are that your insured has reversed into our clients vehicle. So we already knew TPR were disputing, and should have made PH (policy holder) aware of this.”*

*I've next considered if Mr W was disadvantaged by UKI not informing him of the dispute earlier, and if Mr W would likely have acted differently had he known.*

*I asked Mr W to confirm the precise location of the collision and provide evidence that he had requested CCTV upon learning of the liability dispute.*

*Mr W has provided a map which pinpoints where the collision happened. I'm satisfied this is accurate as the location matches the area in a photo Mr W provided taken after the collision which shows the damage to the rear of his car.*

*Looking at Google Street View there appears to be CCTV cameras within the vicinity of where the collision happened - although it isn't possible to discern whether these cameras would have captured the incident.*

*Mr W has also provided a text message dated September 2023. This message shows that a nearby company informed Mr W CCTV footage would no longer be available due to the amount of time which had passed.*

*With the evidence available to me I'm unable to say if CCTV would have been available, or what it would have shown if it was, but I find it reasonable for Mr W to have held the belief it may have been available. As a result, I think it's fair to say losing out on the opportunity to obtain CCTV would have been frustrating and upsetting to Mr W.*

*I've also considered whether Mr W could reasonably have been expected to try to obtain any CCTV earlier regardless of whether UKI had informed him about the liability dispute. Mr W says that at the outset he had no reason to assume there would be any issues as the third party was apologetic and admitted fault at the scene. And given Mr W's account of events, which he says involved the third-party*

*hitting the rear of his car, I understand why Mr W believed he may not have needed to obtain any additional evidence.*

*I've also seen no indication that upon reporting the claim UKI expressly asked Mr W if there was CCTV or to provide it. The accident report form UKI sent to Mr W doesn't ask outright if there is CCTV available, it just says to provide it if you have it:*

*“Photographs and CCTV or any other evidence you have If you have any photographs, CCTV or any other evidence of the location of the accident, the damage to the vehicles, or any photographs taken at the scene, please return these with this form, or forward to us in due course.”*

*I've considered here that the message Mr W provided showing CCTV was unavailable was dated September 2023 – before UKI informed Mr W of the dispute. But from Mr W's comments I think he sought the CCTV earlier due to concerns he had about how the claim was progressing. He has, for example, expressed concern that in a conversation he had with an assessor they said the collision happened in a car park, when it actually happened on a road.*

*Based on these points, I don't think it would be fair to place greater onus on Mr W instead of UKI for the CCTV not being requested earlier. UKI are the claims handling experts here, and I would've expected it to have been aware of the need to strengthen Mr W's claim given the liability dispute – particularly in view of the account of events provided by the third party. I acknowledge UKI wouldn't have been aware, when the third party disputed liability at the outset of the claim, that there might be CCTV evidence. But UKI should've been aware at this point that any independent evidence would likely carry more weight here.*

*Given it was clear liability was in dispute, I think the onus was then on UKI to inform Mr W about this and then discuss whether there was any evidence Mr W might have which would strengthen his claim. The information shows, around the couple of weeks following the incident, there were two opportunities for UKI to discuss the third party's liability stance while in a call with Mr W. And, given that it's clear Mr W was aware that there might be CCTV footage here, I'm persuaded Mr W would've likely then taken steps much sooner to enquire about whether CCTV was available – particularly given the time sensitive nature of such evidence.*

*I acknowledge Mr W thinks it's unfair UKI haven't recorded the claim as a non-fault and for him to be penalised by a loss of no claims discount and increase in premiums.*

*While I can appreciate Mr W's disappointment at losing out on the chance to obtain this CCTV footage, I can't agree that it definitively would have changed the outcome of the claim in his favour. I say this because I can't be certain that CCTV would have been available even if Mr W had asked for it sooner, that the camera was pointed towards the scene of the collision and would have captured it to a useful level of quality, or what the CCTV footage would have shown if it had captured the collision.*

*For these reasons I don't find it reasonable to instruct UKI to amend how it's recorded the claim to non-fault. However, I find that there has been additional distress caused to Mr W from the loss of opportunity of being able to seek out the CCTV when it may have still been available.*

*Turning now to UKI's handling of the claim, I've only considered the period from*

*8 September 2023 to when UKI sent its final response on 15 January 2024. This is because the events before 8 September 2023 were addressed by UKI in an earlier final response it sent on that date and have been considered by our service as a separate complaint.*

*UKI has accepted there were further delays on its part in communicating with the third party's insurer and said in its final response it would ensure Mr W was updated on the claim.*

*Mr W says that UKI failed to reply to his emails and didn't communicate with him. I haven't seen evidence of any emails Mr W sent during the timeframe I've considered which UKI didn't respond to. However, there does appear to be a general lack of updates from UKI to Mr W from 8 September 2023, so I think UKI could have been more proactive in keeping Mr W updated on the claim.*

*Overall in considering the timeframe here, and impact caused to Mr W from the delays and lack of updates, I find UKI's compensation of £275 to be reasonable."*

So, subject to any further comments from Mr W or UKI, my provisional decision was that I was minded to uphold this complaint and require UKI to pay Mr W an additional £150 compensation.

Following my provisional decision, UKI responded accepting the decision. Mr W responded providing some comments and copies of emails between himself and UKI.

To summarise, Mr W said he wasn't at fault for this accident and because the third party accepted fault at the scene, he had no reason to think the third party would change their statement. He also says he could have obtained CCTV had he known the third party was disputing liability.

Mr W has provided two emails he sent to UKI. In the first email, Mr W disputes the 50/50 settlement UKI were proposing and says he requested a copy of the statement from the third party but never received this. In the second email, Mr W again says he doesn't accept the 50/50 settlement and that UKI haven't provided him with information he requested.

### **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, while I understand Mr W will be disappointed, I find no reason to depart from my provisional decision. So I've decided to uphold the complaint for the reasons set out in my provisional decision and copied above, as well as the reasons set out below.

I acknowledge Mr W's comments that he wasn't at fault for this accident, and I appreciate how frustrating it would have been for him if the third party had admitted fault to him at the scene but gave a different account of events later resulting in Mr W being held jointly liable. But as I set out in my provisional decision, this service doesn't have powers to decide on who is liable for a road traffic accident.

The policy terms and conditions which I quoted in my provisional decision allow UKI to decide how it will settle a claim. So my consideration has been on whether UKI carried out a fair and reasonable investigation into the claim before deciding to settle it on a 50/50 basis.

I can't say UKI has acted unfairly if the third party took a different position on liability than they had at the scene as that's outside UKI's control. Because the third party did dispute liability, UKI would have required evidence showing the third party was at fault for there to be a reasonable prospect of successfully holding the third party fully at fault for the accident and settling the claim on a non-fault basis for Mr W.

The only relevant evidence I'm aware of was CCTV – which I understand Mr W would have attempted to try to obtain sooner had UKI informed him earlier of the liability dispute. I've read Mr W's emails about not being provided the third-party statement after requesting it from UKI, but other than potentially making him aware of the liability dispute earlier had UKI provided this statement to Mr W, I'm unaware of any further impact this may have had beyond giving Mr W the opportunity to request CCTV at an earlier point.

Although I find Mr W would have been caused upset at losing out on the opportunity of trying to obtain CCTV earlier on given this was something he had a reasonable and genuine belief would have helped show he wasn't at fault for the accident, I'm not able to go so far as to say this likely would have changed the outcome on the claim. This is because of the uncertainty around whether useful CCTV could have been provided if requested sooner, and if so, what it would have shown.

As a result, I remain of the view that a fair and reasonable outcome for this complaint is for UKI to pay £150 compensation for the distress caused by not informing Mr W earlier of the liability dispute.

As no further representations have been made from either side on the general claim delays and communication issues aspects of the complaint, I see no reason to depart from the finding in my provisional decision that the compensation payment of £275 UKI has already made for this was fair and reasonable.

### **Putting things right**

In addition to the £275 already paid, UKI should pay a further £150 compensation to Mr W for the upset caused in not informing him at an earlier stage about the liability dispute.

### **My final decision**

My final decision is that I uphold the complaint. U K Insurance Limited must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 November 2024.

Daniel Tinkler  
**Ombudsman**