

The complaint

Mr L complains about how U K Insurance Limited trading as Churchill (UKI) has handled a claim on his motor insurance policy resulting in an increase to his insurance premiums.

What happened

In January 2024 Mr L's wife (a named driver on his motor insurance policy) was involved in a collision with a third-party at a junction.

The accident was reported to UKI and Mr L said the traffic lights at the junction weren't working. In the initial telephone conversation Mr L says, UKI said his wife was at fault for the accident. UKI said this was because where traffic lights have failed at a junction, the traffic on the major road has priority and this was the third-party vehicle, not Mr L's wife. Mr L complained to UKI disputing this reasoning and decision. He referenced a question raised as part of the online theory test practice paper which asks:-

"When traffic lights are out of order, who has priority?" The correct answer being nobody.

Mr L felt UKI had based its liability decision on incorrect information and therefore it wasn't fair and needed to be reconsidered.

Mr L accepted that without witnesses it would be hard to prove it was the third-party's fault but, at the same time thought it wasn't his wife's fault. Because of this, he felt liability should be split between the two parties on a 50/50 basis.

Following Mr L's complaint, UKI accepted it had incorrectly said the third-party would've had priority at the junction. But UKI didn't change its liability decision. It said when reconsidering liability, it had based its decision on all factors including damage to the vehicles and the Highway Code.

But UKI did pay £50 to Mr L in relation to the inaccurate information he was given initially.

Dissatisfied Mr L brought his complaint to this service.

Since Mr L referred his complaint to this service, UKI has offered to pay Mr L a further £75 in compensation as it recognised it could have responded to Mr L's liability concerns quicker. However, the offer was rejected by Mr L. Mr L still thought it was unfair for UKI to have found his wife at fault for the accident.

Our Investigator didn't uphold Mr L's complaint. He said he felt UKI had fairly assessed the evidence it had available and hadn't acted unreasonably in the way it investigated Mr L's complaint. He thought its decision on liability was a reasonable one as a result.

Mr L advised his insurance premium has increased since the claim. The Investigator noted although Mr L wished liability to be split 50/50 between the two parties, a 50/50 split would continue to be recorded as a fault claim on Mr L's policy because UKI would be unable to recover all its claim costs from the third-party. He said this meant a 50/50 split claim and a claim where liability was accepted in full, would likely have the same impact on Mr L's policy

premium.

Regarding the offer of an additional £75, our Investigator felt this was reasonable and would not be asking UKI to do anything further.

Mr L didn't agree with the Investigator's assessment and asked an Ombudsman to look at his complaint. So, the case has been passed to me

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.

My role is to consider whether UKI handled Mr L's claim in a fair and reasonable manner. It isn't to decide who was at fault for the accident.

Having done so, I find UKI have handled Mr L's claim reasonably and I'll explain why below.

Firstly, I would like to explain that whilst the term "fault" and "non-fault" have been used by the parties, this terminology can be misleading and requires clarification.

A "fault" claim is more colloquially used, but the actual terminology is "no claims bonus disallowed". It doesn't mean the policyholder is necessarily to blame for the accident but reflects the fact where a claim has been made and the insurer hasn't recovered its outlay. An insurer will be required to register the claim following the Claims and Underwriting Exchange ("CUE") guidance. When recording the claim, the insurer can select bonus disallowed. This does not mean the policyholder was to blame; it simply means the insurer has been unable to recover all its costs in full from another party.

When liaising with customers, rather than use the term bonus disallowed, insurers will often instead say "fault". Use of this terminology can make the policyholder think they were the party to blame for the accident, rather than the correct scenario of an insurer having been unable to recover all its costs.

Alternatively, a "non-fault" claim means bonus allowed. This will be where an insurer has been able to recover its costs in full from another party.

When providing my decision, I will use the terms bonus disallowed and bonus allowed.

Most motor insurance policies contain a term which allows the insurer to handle the claim how they see fit. I have looked at the terms and conditions of Mr L's policy with UKI and it's no different. Page 37 of UKI's policy conditions says:-

"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."*

This term essentially gives UKI a contractual right to settle the claim how it chooses. It doesn't need the agreement or consent of the policyholder, in this case Mr L, to settle a

claim in a particular way. This may lead to UKI making a decision Mr L does not agree with. UKI's decision however has to be reasonable, based on facts and evidence and an adequate investigation should be carried out to gather that information.

Decision to Settle

Mr L feels strongly his wife isn't at fault for the accident, he believes the most appropriate outcome should be for liability to be split 50/50 between the two parties.

As stated above, it is not for me to decide who was responsible for the accident, but whether UKI has taken Mr L's comments and all other evidence into consideration when deciding whether to concede liability or not.

In this case, there are no independent witnesses to support either party's version of events. There's no dashcam footage from either vehicle at the time of the collision, nor is there any CCTV footage. As a result, liability must be decided by considering the parties accounts of the accident, the accident location and the area of damage to the parties' vehicles.

When reconsidering liability following Mr L's complaint, UKI looked at the areas of damage to the vehicles and didn't think this helped Mr L's denial of liability.

I haven't seen the photographs of the vehicles, but UKI's notes say the damage to Mr L's vehicle was to the radiator, front bumper (light) and nearside front wing (light). Mr L doesn't dispute this is the damage. The damage to the third-party vehicle is noted as to the driver's door.

There's some discrepancy between the descriptions of the damage to the third-party's vehicle by Mr L and that contained within UKI's notes. Mr L describes the damage to the third-party's vehicle as being a long scrape to the offside. Mr L has said this was caused by the third-party swerving to avoid his vehicle, but not in time, thus scraping the nearside front corner of Mr L's vehicle with his own.

When considering liability UKI are entitled to consider the associated costs and the likelihood of success if the matter proceeded to court. In this case UKI said, given the road layout (a 4-way traffic light controlled junction, albeit without functioning lights at the time) and the areas of damage to the vehicles, the third-party would've likely travelled further across the junction and would've been there to be seen – meaning Mr L's wife would be most likely held responsible for the accident.

It is Mr L's view that the damage to the vehicles is supportive of his version of events (that the third-party was moving at the time of impact) as had Mr L's wife pulled out of the junction into the already established third-party vehicle, there would have been full frontal damage to his vehicle and a single dent rather than a long scrape to the third-party vehicle.

When taking Mr L's comments into account, UKI within its notes say the area of damage suggests Mr L's wife hit the established third-party vehicle. The third-party vehicle may have been swerving to avoid an accident, but this doesn't mean they weren't already established at the junction.

I understand Mr L feels that UKI admitted liability from the offset and despite its original incorrect analysis, it continues to be unwilling to change the liability decision to a 50/50. I appreciate how strongly Mr L feels that his wife wasn't fully at fault for the accident. But, I find based on the above information that UKI have considered all the available evidence and have reached a reasonable liability decision based on that evidence as the policy allows it to do.

As the Investigator set out, even if the liability decision were amended to be a 50/50 split between the two parties, this would still be recorded as bonus disallowed against Mr L's policy affecting his no claims bonus. This is because regardless of whether a liability decision is on a 100% or 50% basis, UKI would not recover its costs in full from the third-party, meaning the claim would remain as bonus disallowed.

As to UKI's offer to pay £75 to Mr L in addition to the £50 already paid (a total of £125), I find this to be reasonable given the delay in reconsidering his claim and the distress and inconvenience this caused Mr L. UKI should proceed on this basis.

Overall, I find UKI has been reasonable in the way it has dealt with Mr L's claim and administered the policy.

My final decision

For the reasons I've explained above, my final decision is that I uphold Mr L's complaint in part. To put things right U K Insurance Limited trading as Churchill must pay Mr L a further £75 for distress and inconvenience.

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

Lorna Ball
Ombudsman