

The complaint

Mr K complains about the way U K Insurance Limited trading as Darwin ("UKI") investigated a claim and decided liability under his car insurance policy.

What happened

Mr K had a car insurance policy with UKI.

In October 2022 Mr K was pulling out of his driveway and was involved in a collision with a third party, causing damage to both vehicles. He says the collision was the third party's fault.

The collision was witnessed by another third party.

Mr K reported the collision to UKI. It authorised repairs to his car, but Mr K didn't want repairs to be carried out until the third party admitted liability.

UKI investigated the collision and settled the third party's claim. Mr K said UKI didn't tell him it'd done this.

It told Mr K the witness statement wasn't strong enough to be able to pursue action in court against the third party. So it said the claim would be held as 'fault' for Mr K, but it also said the claim was being dealt with on a 'without prejudice' basis so if new evidence emerged it could reconsider the position on liability.

Mr K complained. In its final response, UKI said the witness would be unable to attend the court, and as the case solely relied on their statement, the case couldn't be pursued. But it said it hadn't kept Mr K up to date with the claim as it should. It offered him £100 compensation to close the complaint, Mr K hasn't cashed the cheque.

Mr K remained unhappy and brought his complaint to this service. He isn't happy about UKI's decision on liability for the collision. He also says his car is unusable since the collision. UKI later offered him a further £50 compensation, which he rejected.

Our investigator looked into his complaint and thought it would be upheld in part. She thought UKI's total compensation of £150 was fair but she thought UKI acted within the terms of its policy in deciding liability for the collision.

Mr K didn't agree with the view. Because he didn't agree, his complaint has been passed to me to make a decision.

I issued a provisional decision increasing the level of compensation to Mr K:

It's important I start by saying it's not the role of this service to investigate the circumstances of a collision and apportion responsibility. So, I'll not talk in depth about what happened. But I will mention Mr K was turning right out of his driveway onto a busy road. He says he was stationary across the middle of the road. A third party drove towards him from his right and tried to pass him to his front, and there was a collision.

It's my role to look at whether UKI acted fairly and reasonably and in line with its policy terms when it investigated the collision. And in this case I don't think it has. I'll explain why.

Firstly though, I need to consider Mr K's complaint about his own car. He's said repeatedly that his car is still damaged. He's complained about the noises it makes and that it's undriveable so he's had to use public transport to get to work. I can appreciate Mr K's struggles here, but UKI had authorised repairs to his car, and told him this. Mr K chose to not have his car repaired until liability for the collision was settled.

That's his choice, and so can't say the problems with his car were caused by UKI as Mr K could have asked for the repairs to take place already. I notice from the file that he may have now started this process.

Under the terms of its policy wording, UKI has the ability to decide how claims are handled:

"3 Claims procedure – Our rights and your obligations

b 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"*

This type of wording is common in motor insurance and I think its use is fair.

But in Mr K's claim, UKI has given him confusing and contradictory information about his claim. In its communication with him about the court action it talks about the third-party witness and said it didn't think the witness's account was credible enough. In the same letter (sent over a year after the collision) it also said the third-party insurer hadn't responded. UKI had apparently already paid the third party several months before this point.

Then, when Mr K complained, UKI said the third-party witness wasn't able to go to court as a witness. And I think this inconsistency is poor and has led to a great deal of concern for Mr K. He's told this service he checked with the witness independently and they apparently confirmed they would be willing to attend court.

I've also thought about the recording of the claim as being Mr K's 'fault'. When insurers talk about 'fault' or 'non-fault' they are referring to whether they have been able to recover their costs from a third party. In Mr K's case, UKI settled the third party claim so accepted he was at 'fault' for it. And even if the collision ultimately was decided as 50/50 or some other proportion, Mr K would still have some element of 'fault' on his record.

And it's this decision on liability that stands at the centre of Mr K's complaint. I can see notes from UKI saying that the witness statement was obtained 10 [actually seven] months after the collision and that the witness wasn't willing to attend court – so UKI thought recovering all of its costs from the third party was very unlikely. In the file, there is a written signed statement dated two days after the collision.

The situation as it stands is that UKI has paid the third-party claim, on a 'without prejudice' basis. So it's recorded as being as Mr K's fault unless some further information becomes available. But at the same time, UKI has chosen to not take the matter further in court due to either of the reasons mentioned above.

It seems to me that UKI's approach and service, and its explanation of its activities, hasn't been very good here.

I can see that UKI didn't respond to several of Mr K's emails as it should have done, and some actions were closed down by its claims handlers rather than reply to him.

Unfortunately, the third-party insurer wasn't replying to UKI which caused more delays. Its lack of action has caused Mr K distress and inconvenience for an extended period. I've said above that I'm not considering the damage and repairs to his own car, but the delays and poor communication from UKI are clear to me and happened throughout his claim.

The lack of clarity about why UKI couldn't, or wouldn't, rely on the witness I think sums up the situation well. And that lack of clarity means I think UKI has caused Mr K distress.

I've thought about this and looked at this service's guidelines. I think the appropriate amount of compensation is £300 in total, so £150 more than UKI has already offered him.

But I'm not intending to uphold the part of Mr K's complaint about UKI deciding liability for the collision because, as I've said above, UKI has the right under its policy wording to deal with the claim as it wishes.

Responses to my provisional decision

Mr K responded and rejected my provisional decision. He said that £300 wasn't sufficient for the inconvenience he'd been caused. He also said he'd had to pay his excess and his insurance costs had increased substantially.

He contacted the third-party witness and provided a letter confirming saying that the witness hadn't been contacted by UKI about going to court, and that they would be willing to do so.

I considered Mr K's further information and issued a second provisional decision:

I asked UKI to comment on the third-party witness's assertion that they hadn't been asked about their willingness to attend court. It sent this service its witness questionnaire saying that the witness was not willing to attend court. This form was dated about seven months after the collision.

It's clear from this form that the witness did say they were unwilling to attend court, despite their later assertions to Mr K that they would, in fact, do so on his behalf. So, I can't say UKI acted unfairly in its final response to Mr K.

I've thought carefully about this case and the responses from both parties. I've said UKI has the ability under the terms of its policy to make a decision on liability, even if Mr K doesn't agree, but I'm issuing a second provisional decision because I don't think his, and UKI's further responses show that it took reasonable care during its investigation of the collision, and I think this led to an unfair outcome for Mr K.

It's important I say this service can't compel UKI to take a particular course of action, such as pursuing the case in court, and its policy wording allow it to decide liability as I mention above.

I think the fair solution here is that UKI treat Mr K as though the third party caused the collision. What this would mean is it changes its internal records, and any external databases it's updated, to show the collision was 'non-fault' for him. Mr K can then update his current insurer with this information.

I think it's also fair UKI refund Mr K's excess in line with this if he's already paid it, or not charge him his excess when it repairs his car.

Mr K has said he's unhappy with the way UKI handled his claim, showing him no duty of care to and making "up lies to cover their own inefficiency in this matter". Although UKI has shown evidence about why it said certain things, I do think Mr K is right in saying it's failed to deal with his claim promptly or efficiently. And I think this is clear when it didn't investigate the collision before swiftly deciding to pay the third party.

But I think the £300 compensation I proposed to award him is in line with this service's guidelines. Mr K has said he's cashed a cheque for £100, so UKI would need to provide him with a further £200.

Responses to my provisional decision

Mr K accepted my provisional decision.

UKI responded and said it agreed its handling of Mr K's claim wasn't very good, but it maintained it was able to decide liability for the collision under the terms of its policy. It said it hadn't received pieces of evidence until several months after they'd been written.

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 considered UKI's response carefully. I said above that, under the terms of its policy wording, UKI is fairly able to decide on liability for Mr K's collision.

But the key point of Mr K's claim and complaint is that this decision made by UKI led to an outcome that was unfair for Mr K.

UKI has agreed his claim wasn't handled very well, and it's the failures in its dealing with him that lead me to say that it's led to significant distress and inconvenience for him. It would be speculation to consider whether a better, more prompt investigation would have led to an understanding of Mr K's situation on the day of the collision, but from the file of evidence I have UKI simply didn't gather sufficient data or investigate sufficiently. The examples of not responding to Mr K and making payment to the third party are examples of that.

It follows that I'm upholding Mr K's complaint. UKI now needs to treat the collision as being a non-fault for him and record it as such on databases it's updated. It also needs to refund his excess if he's paid it, and pay Mr K a total of £300 compensation for his distress and inconvenience.

My final decision

It's my final decision that I uphold this complaint. I require U K Insurance Limited trading as Darwin to:

- Record the claim as non-fault for Mr K, and update any internal and external databases accordingly.
- Refund Mr K's excess if it's already been paid, or don't apply it if he hasn't had the repairs carried out.
- Pay Mr K £300 compensation for his distress and inconvenience. I'm aware £100 has already been paid and this can be deducted.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 6 December 2024.

Richard Sowden
Ombudsman