

## **The complaint**

Mr A complains that Tradex Insurance Company PLC has unfairly declined his claim under his commercial motor insurance policy.

## **What happened**

Mr A is a taxi driver and held a commercial motor insurance policy with Tradex.

On 15 December 2022 Mr A was involved in an accident in which he said his vehicle was hit from behind by a lorry. A few days later he notified Tradex of the incident to make a claim. Tradex looked into the matter and contacted the third-party insurer who advised that it believed the accident was Mr A's fault. It provided dashcam footage of the incident which it said didn't match with the circumstances that Mr A had described.

Tradex arranged for Mr A to be interviewed. In the first interview a statement was taken in which Mr A explained that the third-party vehicle hadn't maintained a safe braking distance and had hit him from behind. Tradex said a second interview was conducted, in which Mr A was shown the dashcam footage, and a second statement was produced. In that statement it said Mr A didn't accept that the footage showed him braking or that he had applied the brakes. Mr A also said that he may have reduced speed, but this was due to the end of the slip road approaching and that there were vehicles in the distance. Tradex says that the contradictions between the statements and the evidence provided by the third party led it to the opinion Mr A deliberately provided a false statement. So, it declined the claim and referred to the general condition on the policy for fraud.

Mr A disputed this outcome and made a complaint to Tradex. He said that the assertion from the third party that the accident was deliberate was unfounded. He said he is a genuine individual with an impeccable record over his career as a taxi driver. He said that he exercised caution when navigating bends or encountering slower-moving vehicles. And that this practice isn't indicative of wrongdoing. Tradex maintained its stance.

Unhappy with this outcome, Mr A brought his complaint to this service. An investigator looked into it and felt that the complaint should be upheld. He didn't find that the change in Mr A's testimony was implausible. He said that he couldn't see any significant suggestion that Mr A intentionally caused the accident or acted dishonestly with the intention to obtain a benefit to which he wasn't strictly entitled. So, he recommended that Tradex pay the claim in line with the remaining terms and conditions of the policy.

Mr A agreed with this outcome, but Tradex didn't. It said that it felt the investigator hadn't considered the current reason for the rejection of the claim, which was that it believed Mr A had provided a deliberately false or misleading statement.

As no agreement could be reached, the matter was passed to me to decide.

On 6 December 2024, I issued my provisional decision. In it I said the following:

"It is important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Mr A. Rather it reflects the informal nature of our service, its remit, and my role in it.

When it declined Mr A's claim, Tradex referred to a condition of the policy which says:

*Fraud*

*If you, anyone acting on your behalf or any other insured person makes a claim which is in any way fraudulent. We*

- i) will not pay the claim*
- ii) will seek to recover from you any costs we have incurred*
- iii) may treat the policy as void from the time of the fraudulent act*
- iv) will retain any premiums paid by you*
- v) may tell the police.*

*Fraud may include*

- a) statements which are deliberately false, intentionally inflated or exaggerated*
- b) documents given to us which are false, forged or stolen*
- c) claim details and/or information given to us which is inaccurate, falsified, misrepresented or has been withheld*
- d) willfully causing loss, damage or injury*

Tradex says that in its opinion Mr A provided a deliberately false statement and therefore it can rely on this term and does not have to pay his claim.

To clarify, my role is not to determine if Mr A has committed fraud. It is up to Tradex to show that this is more likely than not to be the case. I'm also aware that Mr A has strongly denied that he intentionally caused the crash. But from what I have seen Tradex hasn't declined the claim on the basis it thinks Mr A caused the crash deliberately - that was the assertion made by the third party. But in any event, my role is not to determine what actually happened in the accident or who is to blame, but to determine whether I think it would be fair and reasonable for me to allow Tradex to rely on this term.

When the claim was first notified to Tradex in December 2022 Mr A had said there had been a build-up of traffic in the front and he was hit by a lorry from behind. So, the suggestion was that the lorry hadn't maintained safe braking distances and it was the lorry driver who was at fault for the accident. However, the lorry driver disputed this allegation. Mr A was interviewed by Tradex. And I've seen a copy of his signed statement from May 2023. In the statement, Mr A said that there was traffic slowing ahead and so he adjusted his speed accordingly, first by removing his foot from the accelerator pedal and then by applying moderate pressure to the brakes. So, the information in this statement would appear to support the version of events that Mr A provided in his first call to Tradex six months earlier, i.e., that he slowed down and the lorry went into the back of his vehicle.

The third party provided dashcam footage of the incident which was shown to Mr A. Tradex said this footage contradicted the testimony Mr A had provided previously. Tradex also referred to the statement produced in June 2023 after Mr A had been shown the footage. I've seen the dashcam footage. This footage is taken from the front view of the lorry which hit Mr A's vehicle. In this footage I can see that Mr A's car appears to be travelling in the left lane with no vehicles in front of him. And from what I have seen it would appear that Mr A applied his brakes and slowed down quite rapidly, just prior to the lorry going into the back of his vehicle.

I've also looked at the statement taken in the second interview with Mr A in June 2023. In this statement, Mr A said he didn't accept he had applied the brakes or that his brake lights became illuminated. The statement also refers to the fact Mr A said that he may have reduced speed prior to the collision because he was near the end of the slip road and there

were vehicles ahead in the distance.

I'm satisfied that it is reasonable for Tradex to rely on the dashcam footage that was supplied by the third party. This is because there hasn't been any suggestion that this footage isn't of the accident involving the two vehicles in question. So I think it's the most reliable evidence. And having looked at the footage, I think that there are inconsistencies between what Mr A reported to Tradex in his statements and what this footage shows. So, on balance, I'm satisfied that Tradex has persuasive evidence which suggests that the accounts given by Mr A aren't accurate. I'm also aware that, after the footage was shown to Mr A he maintained that his account of the incident was correct. So, in the absence of any reasonable explanation for these inconsistencies, I think it was reasonable for Tradex to conclude that Mr A has deliberately made a false statement or statements. And bearing in mind his statements supported his claim and made it more likely Tradex would pay for the repairs to his vehicle, I think it was reasonable for Tradex to conclude Mr A made false statements in an effort to gain a financial advantage.

When Mr A spoke with our investigator in August 2024, he did say that there is a possibility he panicked when another lorry that had been travelling behind him went past. He believes it may have sounded its horn and he may have slowed as a result. I appreciate what Mr A has said to our investigator, however, memories often fade over time and therefore I'm not persuaded that Mr A's further account of the events from 18 months after the incident can be considered as accurate. I also need to take into consideration that Mr A doesn't appear to have given this explanation to Tradex during the investigation of the claim or when he was shown the footage of incident. So, this information doesn't alter my opinion that Tradex acted reasonably when declining Mr A's claim."

Tradex confirmed it accepted the findings of the provisional decision, however, Mr A disagreed with the outcome. Mr A listed several points and I've summarised his comments below:

- Health and impact of the accident – the accident has caused him pain and discomfort which he is still suffering from today, along with an impact on his mental health. He doesn't feel that Tradex has shown any compassion with how they have handled his claim.
- Honest mistakes under trauma are not fraudulent – the inconsistencies in his statements are down to the trauma and shock he experienced. Mr A refers to memory distortion and that his initial statements were his best understanding of the event at that time. Feels the intention to treat his honest mistake as evidence of fraud is unfair.
- Tradex has not proven fraud – this is a serious allegation and one that requires clear and convincing evidence of dishonest intent. Tradex has not met this burden of proof. Mr A refers to the legal and regulatory standards under the Consumer Insurance (Disclosure and Representations) Act, known as CIDRA, and the Financial Conduct Authority's Insurance Conduct of Business Sourcebook (ICOBS).
- The dashcam footage lacks content – this doesn't provide a full picture of the events leading up to the accident. The footage must be interpreted in the context of my testimony and the circumstances of the accident. On its own it does not prove that he acted dishonestly or fraudulently.
- Tradex's handling of the claim – Mr A says he was pressured to sign agreements on the understanding his claim would be paid.
- The purpose of comprehensive insurance – the policy he has is designed to provide cover even in case where the policyholder may bear some fault. Mr A says he paid his premiums in good faith and Tradex are denying him the protection he paid for.
- Fairness and reasonableness – the Ombudsman's role is to determine what is fair

and reasonable in the circumstances. Based on what has been mentioned in the points above, Mr A thinks his complaint should be upheld.

### **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 would like to take this opportunity to thank Mr A for his considered and substantive response. I'm fully aware of how much of a disappointment it would have been to receive my outcome and I can understand his strength of feeling on the matter. However, having reviewed his comments, I'm not persuaded to alter my decision on his complaint. I'll explain why.

Mr A has referred to the physical injuries he has suffered, along with the impact the whole episode has had on his mental health. I'm sure this has been an incredibly traumatic experience for Mr A and one that he says he is still coming to terms with. But that doesn't mean that I should simply ignore the terms of the policy when reaching my decision.

In his reply, Mr A has said his initial statement to Tradex was as a result of the shock and trauma he suffered. And that this was his best understanding of the incident at that time. However, as he recovered and has been able to review the dashcam footage he has now been able to provide a fuller account. I appreciate what Mr A is saying here and small inconsistencies could be put down to misremembering of circumstances. However, Mr A's recollection of the event didn't alter in the months between the initial notification of the event in December 2022 and the first statement taken in May 2023. And even after being shown the dashcam footage in June 2023, Mr A didn't deviate from his original version of the sequence of events that led to the crash. It doesn't seem that Mr A was unclear or unsure about what had happened, based on the evidence provided.

Mr A has also commented that the dashcam footage doesn't capture the sound of the horn he heard, nor does it take into account his state of mind or natural reaction to the perceived threat. He says it also doesn't show the position of other vehicles that may have been near the slip road or contributed to his actions.

As explained in my provisional decision, I have seen the footage. There doesn't appear to be any indication of any other vehicles in front of Mr A's car. And it appears that the first time that there was mention of hearing a horn was during a conversation with our investigator in August 2024 which is quite some time after the incident - and a year after Mr A was shown the dashcam footage by Tradex. I haven't seen anything to show that Mr A changed his account following the review of the footage or in the months that followed and so I'm not persuaded that this should now alter the outcome.

Mr A has referred to CIDRA in his response to the provisional decision and the difference between deliberate or reckless misrepresentation and honest mistakes. However, CIDRA only applies to information provided to the insurer prior to taking out the insurance contract, so this wouldn't have any bearing on Mr A's complaint. And while ICOBS does require an insurer to not decline a claim unfairly, as I explained in my provisional decision, I'm satisfied that Tradex has fairly declined the claim based on the policy terms and conditions and the definition of fraud listed within those terms and conditions.

I've noted Mr A has alleged poor handling of the claim by Tradex. He says he was led to believe that signing certain documents would mean his claim would be paid. I haven't seen any previous comment about being put under any pressure to sign documents – I would have thought Mr A would have made this specific point to Tradex earlier. I'm also aware that Mr A didn't sign the statement issued in June 2023 which would appear to contradict this allegation. So this point doesn't persuade me to alter my outcome.

I've noted Mr A's comments about the purpose of comprehensive insurance. And I agree that the policy is there to provide cover even in certain situations where the policyholder bears some fault for an incident. However, when taking out an insurance policy you are agreeing to the terms and conditions that make up the contract. So it doesn't necessarily follow that every incident that occurs should be covered by the insurer – if the policy terms aren't met then the insurer has the right to decline a claim.

As Mr A has commented, my role is to reach what I believe is a fair and reasonable outcome on complaints. Having considered all of the information provided, I'm satisfied that Tradex has acted fairly and reasonably when declining Mr A's claim using the fraud term within the policy. I don't require it to do anything more.

### **My final decision**

As stated above, I don't uphold this complaint against Tradex Insurance Company PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 February 2025.

Jenny Giles  
**Ombudsman**