

The complaint

Miss K complains about how U K Insurance Limited (UKI).dealt with a claim under her motor insurance policy when her vehicle was in collision with a third party vehicle. Miss K is unhappy at the decision made by UKI on liability for the claim and that UKI didn't pursue CCTV footage of the accident.

References to UKI in this decision include their agents.

What happened

In January 2024 Miss K was involved in a collision with a third party vehicle, a motorcycle. Miss K was waiting to turn right at a box junction when the motorcycle hit her vehicle. The rider became aggressive and rode off without giving Miss K his details. Miss K thought the damage superficial to her vehicle, so she didn't think it necessary to tell UKI about the incident or make a claim. However, the third party insurer made a claim with UKI just over a fortnight later.

UKI contacted Miss K to tell her about the claim. Miss K said there could be CCTV footage of the incident (but wasn't sure) which she asked UKI to follow up. However, the website of the local council stated CCTV footage was only retained for 30 days. By the time UKI processed Miss K's accident report form the following month, any footage wouldn't be available.

While there wasn't any CCTV footage, UKI considered the circumstances of the accident and the conflicting versions of events from Miss K and the third party. Based on this, they concluded Miss K crossed the path of the motorcycle, which was proceeding correctly from the opposite direction. So, they accepted liability for the accident and deemed the claim to be a fault claim against Miss K.

Miss K was unhappy at UKI deeming her at fault for the accident and that they hadn't followed up sufficiently quickly to obtain any CCTV footage that may have been available and showed the circumstances of the collision. So, she complained to UKI.

In their final response UKI partly upheld the complaint. On the CCTV footage, UKI referred to the sequence of events, saying by the time they processed her accident report form, any footage wouldn't be available. While there may not have been any footage (or made a difference to the outcome of the claim if there were) UKI accepted they should have been more proactive in pursuing it. In recognition, UKI awarded £150 compensation.

More generally, based on review of the accident circumstances, UKI said it would have been a fault claim, as they concluded the third party vehicle had a greater right-of-way. So, UKI wouldn't have been able to defend their position as it appeared Miss K was mid-turn when the collision occurred. UKI referred to the policy terms providing for them to settle claims. On the issue of whether Miss had been made aware of her rights to refer her complaint to this Service, UKI said they'd correctly informed Miss K of her rights.

Miss K then complained to this Service. She was unhappy at UKI deeming her at fault for the accident, which she strongly disputed, saying the motorcycle rider hit her and a passing

motorist said it was the motorcyclist's fault. UKI hadn't requested the CCTV footage when she asked them to, when there would still have been time to obtain the footage within the 31 day retention period. She also didn't think UKI had made her aware of her referral rights to this Service.

Our investigator didn't uphold the complaint, concluding UKI didn't need to take any action. She thought UKI had acted on the information available to decide liability for the accident, which the policy terms provided for them to do. But they acknowledged they should have done more to follow up on the CCTV footage. While the damage to Miss K's vehicle was superficial, the investigator noted the policy required a policyholder to tell UKI about an accident as quickly as possible, even if they weren't making a claim. Had Miss K done so at the time of the accident, UKI may have had more time to pursue the CCTV footage. However, there was no certainty any footage might have been available. On referral rights to this Service, the investigator concluded UKI had made Miss K aware of her rights on at least three occasions. The investigator also thought UKI's compensation as fair and reasonable.

Miss K disagreed with the investigator's view and asked that an ombudsman consider the complaint. She said she didn't inform UKI about the accident because she didn't have the third party details. And when UKI contacted her a couple of weeks after the accident and she requested they follow up on the CCTV footage, they flatly refused – but there would have been time for them to do so within the 31 day limit the council retained footage. And if the third party insurer was confident of their position, they should have requested the footage.

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 here is to decide whether UKI have acted fairly towards Miss K.

There are three main issues in Miss K's complaint. First, the decision by UKI to hold her liable for the accident and deem the claim to be a fault claim, which Miss K strongly disputes. UKI say they assessed the circumstances of the accident, including the [conflicting] accounts of what happened from Miss K and the third party motorcyclist. And they are entitled to determine liability under the terms of the policy.

Second, there's the CCTV footage issue. Miss K says UKI had the chance to request this, but declined to do so, despite having the opportunity within the local council retention period. UKI acknowledge they could have been more proactive in doing so and awarded compensation. But they say there may not have been footage, and even had there been, it may not have changed their decision on liability.

Third, there's the issue of referral rights to this Service, with Miss K saying she wasn't properly advised by UKI – who maintain they did.

On the first issue, I recognise the strength of what Miss K has told us (and UKI) about the circumstances of the accident and that she was in no way responsible for what happened – the motorcyclist was at fault (and aggressive towards her in the immediate aftermath of the accident, refusing to provide their details). I don't doubt the strength of Miss K's feeling on this issue. But it's not the role of this Service to determine liability for an accident and whether a claim should be deemed a fault claim (or a non-fault claim). It's to decide whether UKI acted fairly in determining liability.

The policy terms, as they do in motor insurance policies more generally, provide for UKI to assess claims and determine liability. Under a heading *When we can act on your behalf* the policy wording states:

“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 person connected to this policy. This can be for your benefit or our own benefit.”*

Looking at the evidence available about UKI’s decision to deem Miss K at fault. When the third party claim was received, Miss K contacted UKI shortly afterwards. She couldn’t recall precise details of the incident, so UKI sent her an accident report form to complete. She sent the completed form (with photograph of the scene after the collision). Miss K said the third party motorcycle approached from the opposite direction at the junction at which she was turning right and collided with her vehicle. The third party said Miss K passed a red light and turned into the motorcycle.

Looking at both accounts and the photograph, UKI concluded Miss K appeared liable for the accident as she had turned across the motorcycle’s path. I can also see from UKI’s claim notes that they discussed the accident circumstances with Miss K, who strongly maintained she wasn’t at fault. I can also see the decision was reviewed within UKI before they reached their decision.

I can also see UKI communicated their decision to Miss K, as follows:

“Please note that we have reviewed liability further along with accident location, images and your accident report form.

It is in our opinion that you will be held responsible for this incident for turning across the path of the third party vehicle.

The third party is a vulnerable road user and had greater right of way proceeding on the main road when your vehicle was turning across their path.”

As I’ve said, it isn’t my role to determine liability for the accident but to conclude whether UKI acted reasonably in reaching their decision. Based on the above points, I’ve concluded they did act reasonably in assessing the evidence available (from both parties) and the circumstances of the accident. They also discussed it with Miss K. While recognising the strength of her view she wasn’t responsible, I think UKI acted fairly and reasonably in reaching their decision on liability.

The policy wording also makes it clear a policyholder should report an accident as soon as it happens, even if the policyholder doesn’t intend to make a claim. Under the *Making a claim* section of the policy it states:

“...Even if you don’t make a claim on your car, it’s important to let us know about the accident as quickly as possible. This will enable us to contact the other party and resolve the entire claim, giving you the best service and keep the costs down.”

Miss K says she didn’t contact UKI immediately after the accident as she didn’t have the third party details. While this may have been the case, it wouldn’t have prevented her contacting UKI to tell them about the accident, so they were aware of it should – as subsequently happened – the third party (or their insurer) contact them to make a claim. In that situation, UKI would have had some details of the alleged incident and Miss K’s version

of events (before the third party insurer contacted them). It would also have given more time for UKI to consider whether to seek the CCTV footage Miss K told them might be available (and requested they follow up).

Turning to the second issue, that of the CCTV footage, Miss K says UKI should have pursued this as it could have supported her version of events. Looking at the sequence of events, UKI contacted Miss K on 30 January, following notification to them of the third party insurer (25 January). Miss K spoke to UKI on the same day and completed an accident report form (dated 7 February 2024). There's mention of UKI contacting the local council after that, to be told there wasn't any footage available. Miss K says UKI should have requested it sooner, had they done so it may have been available (within the 31 day period in which footage was kept).

I've considered this point carefully, noting UKI accept they could have been more proactive in pursuing the footage. However, as I've noted, UKI weren't aware of the accident before they were contacted by the third party insurer, and it was a further five days before they spoke to Miss K (and eight days before the accident report form she completed). All of which would have taken most of the 31 days any footage would have been kept. However, even had any footage been available (assuming any CCTV camera was working and pointing in the right direction to capture footage of the accident) it's not possible to know – in its absence – whether it would have corroborated Miss K's version of events. It may have corroborated the third party's version of events or been inconclusive. So, I can't reasonably conclude it would have changed UKI's decision on liability. And it wouldn't have changed UKI's assessment of the accident and liability decision from the other evidence available.

However, as UKI accept, they could have been more proactive, notwithstanding what I've said. I think in the circumstances, their award of £150 compensation is fair and reasonable and in line with what I would expect. So, I won't be asking them to make a further award.

Miss K also says that if the third party insurer was confident of their position, they should have requested the footage. However, my role here is to consider the actions of UKI as Miss K's insurer, not the actions of the third party insurer.

On the issue of whether Miss K was provided with her referral rights to this Service, I've considered the communications between UKI and Miss K. I've noted a general point that the policy terms and conditions include a section on complaints (*If you have a complaint*) which includes several references to this Service and the rights of a consumer to refer matters to us at various stages of UKI's complaints procedure, for example at Summary Resolution Communication; Acknowledgement; Unable to reach resolution within 8 weeks stages of a complaint; and Final Response. Contact details for this Service are also provided in a separate sub-section headed *Independent review*.

In terms of specific communications with Miss K, I've seen the final response issued by UKI in May 2024 and it includes the appropriate mention of Miss K's right to refer her complaint to this Service. There's a separate exchange shortly afterwards in which UKI confirm Miss K having six months from the final response to refer her complaint to this Service. I've also seen an earlier acknowledgement of Miss K's complaint to UKI, a month before the final response, which refers to her right to refer a complaint to this service if, after eight weeks, a solution hasn't been agreed. And her referral rights if an outcome can't be agreed, when UKI send a letter setting out their [final] decision.

So, I've concluded Miss K was properly made aware of her referral rights to this service. Taking all these points into account, I think UKI have acted fairly and reasonably, so I won't be asking them to do anything further.

My final decision

Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 28 February 2025.

Paul King
Ombudsman