

## **The complaint**

Mr S has complained about One Insurance Limited. He isn't happy about the way it settled liability after he made a claim under his motor insurance policy.

## **What happened**

I have previously considered this case and provided my initial thoughts in a provisional decision as follows –

*“Mr S was involved in a minor collision with another vehicle on a roundabout. He explained that he had followed the road signs and markings to change lanes on a large roundabout and that a car, which had already left the lane he was entering, veered back and collided with his car.*

*Mr S explained what had happened and One Insurance wrote to the third party insurer holding its policy holder responsible. The third party insurer replied that it believed that Mr S was wholly responsible for the accident.*

*Mr S provided dash cam footage from his car which he felt justified his position. One Insurance's claim notes show that having viewed the footage it initially agreed with his view. There was then a period of several months during which little happened other than One Insurance explaining that it was having problems sharing the dash cam footage with the third party insurer. Mr S made several attempts to help One Insurance by complying with requests to re-send the footage in different formats.*

*The claim notes show that after several months a different person at One Insurance viewed the footage and immediately accepted liability on behalf of the insurer. Mr S was notified of this change in One Insurance's position and complained. It argued that Mr S had moved into the other vehicle's lane without the necessary level of care and had caused the collision.*

*When Mr S complained to this Service our Investigator agreed with his position. The Investigator felt that the video evidence showed the other car left the middle lane it was in and moved to the inside lane, but later veered back into the path of Mr S' car once he had moved into the middle lane, from his original position in the outside lane. As a result the investigator felt that One Insurance had acted unfairly in how it had interpreted the evidence and should reconsider the issue of liability based on that interpretation. He also felt that One Insurance should pay £250 compensation for its poor handling of the claim which he felt had caused Mr S stress and inconvenience.*

*One Insurance didn't agree and felt that it couldn't reasonably argue that the other party was entirely to blame, although it acknowledged that there was a possibility that the claim could have been settled on a split liability (50/50) basis. But as Mr S would still have a fault claim marked against him it felt that this made little difference as Mr S would not have been disadvantaged.*

## **What I've provisionally 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 I'm presently minded to only partly uphold this complaint. I know this will come as a disappointment to Mr S, but I'll explain why.*

*I can understand Mr S' frustration here as he was at the scene and feels the other driver took his lane and caused a slight coming together of the cars. But it isn't the role of this Service to decide liability, although we do look to ensure insurers have acted in a fair and reasonable way.*

*Under the policy terms, One Insurance has the right to take over the settlement of the claim, meaning that it can decide whether to take a third party to court or settle a claim. Legal proceedings are time-consuming and expensive and the outcome can be uncertain. As such, it will not always be commercially sensible to take legal action against a third party. However, this Service's general approach is that insurers should act fairly and reasonably in deciding whether to settle or pursue a third party. We expect insurers to make a reasonable assessment, based on a clear understanding of the evidence and the circumstances surrounding the accident.*

*With this in mind I've carefully considered how One Insurance has handled this claim. It's clear to me that it carried out a reasonable investigation and took into consideration all of the available evidence. I do agree that it could've been clearer in updating Mr S, especially as it changed its position – from split liability, to holding the other side fully at fault to then fully accepting liability. It's not uncommon for an insurer to change its position on liability as it reconsiders the available evidence and, again, the insurer is free to do so under the terms of the contract of insurance. But I do feel it has duly considered all of the evidence available to it and, as I've outlined, this Service doesn't get involved in deciding liability.*

*I know Mr S feels that he took the correct lane and was established in the lane when the contact occurred. But settling claims on roundabouts is notoriously difficult and, having looked at the various videos from the dashcam footage, I can see why One Insurance took the view that it wasn't possible to argue that the other party was fully liable for the collision. It could be argued that Mr S had time to take evasive action as the other car remained within his line of sight and as demonstrated by Mr S sounding his horn before the contact. And again, when vehicles are both changing lanes it is very difficult to determine liability wholly against one party or the other.*

*I can understand why our Investigator suggested revisiting liability, especially as some of One Insurance's stated interpretation of the incident doesn't adequately match the dashcam evidence. This is where some of One Insurance's communication could have been better and potentially prevented this dispute. But as I think it's not unreasonable of One Insurance to decide that Mr S was at least partly responsible it follows that the likely best outcome Mr S could have got was for split liability. I agree with One Insurance that, as a result, this claim would always have a similar impact on Mr S in that he would have a fault claim marked against him.*

*As a result I don't think that it is pragmatic to require One Insurance to revisit the issue of liability. My view is that while it's communication with Mr S could have been improved I could not consider that it had acted unfairly by declining to argue for full liability against the third party. And whether it settled, as the contract allows it to do, on full liability against Mr S, or 50/50 liability, the outcome for Mr S would be no different in real terms.*

*However, I do think that Mr S should be awarded £250 by way of compensation in acknowledgement of the lack of a clear explanation and the upset and frustration that he has*

*been caused by One Insurance's handling of the claim. It seems now to accept that it could have taken a position of 50/50 liability which may have prevented this dispute. It's clear to me also that its explanation of the reason for accepting full liability didn't properly reflect the video evidence and caused Mr S understandable upset. Such failings clearly led to a breakdown in trust and a concern from Mr S that One Insurance wasn't acting in good faith.*

*In conclusion, I consider it would be very difficult for One Insurance to fully defend Mr S in court if it looked to dispute the claim. Although I know Mr S feels that the other driver was at fault I don't feel there is sufficient evidence to fully support that view and so, at best, I think the claim could have been settled on a split liability (50/50) basis which would still have left Mr S with a fault claim against him.*

*It follows that for the reasons outlined above I am issuing a provisional decision on the basis that I'm inclined to partly uphold this complaint.*

Neither One Insurance, nor Mr S, accepted this provisional decision.

Mr S argued that he should still be held free from blame for the accident. He repeated his views about the use of lanes on this type of roundabout and argued that under the rules of the highway code he was using the right lane and the third party was not. He particularly argued that he did not have the opportunity to avoid the collision as the third party had moved back into Mr S' lane without indicating, and he would not have been able to avoid the collision without manoeuvring dangerously himself.

One Insurance felt that the award of £250 in compensation was unjustified. It felt that the provisional decision implied that it had accepted that a split liability decision would have been reasonable, arguing that it had only stated that it had "accepted that there was a potential for split liability". It also pointed out that Mr S had objected to any element of liability against him so any attempt to define this case as split liability would not have resolved the complaint. Generally, One Insurance felt that its original decision was correct and that its actions did not justify the award against it. Finally, One Insurance objected to what it saw as the inference that there would have been a different outcome for Mr S if the claim had been recorded as split liability. It felt that Mr S had been wrongly led to believe that was the case.

### **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 have decided to remain with the outcome of my provisional decision. I will explain why with reference to the comments made by both parties.

Mr S has gone to great lengths to explain his belief that he acted correctly and that the other driver was fully at fault. He has referred to specific rules for using spiral roundabouts and has, throughout, argued that he moved to the correct lane and that the third party wrongly moved into his lane without warning. He feels strongly that, as a result, he can't be held responsible for any aspect of the incident.

I have explained previously that the role of this service is not to make the decision on liability. That is the responsibility, under the contract of insurance, of the insurer and, ultimately, for a court if necessary. It falls to me to decide whether the insurer has discharged that responsibility appropriately and fairly. I've also explained that an insurer is entitled to make a commercial decision about whether to dispute liability and whether, on the balance of probabilities it is the right thing for it to do. Again, I must consider whether those decisions are made fairly and don't unreasonably prejudice the complainant.

In this case I have accepted that One Insurance was entitled to conclude that it could not reasonably have argued for full liability against the third party. In answer to the issues raised by Mr S specifically, and again having considered all of the video evidence, my view is that One Insurance were not acting unfairly in concluding that Mr S had some responsibility for the collision. I would remind Mr S that he and the other driver were actively changing lanes and that the other vehicle was visible at all times to him. I make this point as road users are responsible not only for abiding by rules of the road, and which lane is the right one to use, but also for being aware of the actions of other drivers and reacting accordingly.

Again, I am not making the decision on liability which a court might make. I am pointing out to Mr S why I believe that One Insurance was not acting unfairly in coming to the conclusion it did that it would not seek to argue for full liability against the third party. I appreciate that this distinction will disappoint Mr S but again, I am not seeking to make the argument that he was wholly responsible for the collision.

I make that point as it is one that One Insurance's own response to the provisional decision does not seem to acknowledge. To be clear, my provisional decision did not say that One Insurance accepted that they should have made a decision based on split liability as its response infers. I said "*It seems now to accept that it could have taken a position of 50/50 liability which may have prevented this dispute*".

On the issue, argued by One Insurance, of the impact of a 50/50 liability decision, it has been made clear in this decision that I take the view that there would be no material difference in the impact on Mr S compared to the decision to accept full liability. My provisional decision, and the reason for changing it from the initial view of the investigator, was based on the pragmatic view that, as a result of this position, there was no benefit to be obtained by reviewing the decision on liability.

I have not suggested that a split liability decision by One Insurance **would** have prevented the complaint. But I do take the view that One Insurance's actions, changing its view on liability more than once and then deciding, without clear explanation why, to settle on full liability against Mr S, created a breakdown in trust. As my provisional decision made clear, it appears that One Insurance reversed its position only when a new case handler took on the case and following several attempts by Mr S to provide the video evidence in differing formats, which one Insurance told him they were having difficulty sharing with the third party insurer. I will record here that I did not see evidence that this was ever achieved. But that issue has not changed my decision on the outcome of this complaint, other than the impact on Mr S of these exchanges being reflected in the compensation awarded.

And while I have emphasised that I am not making a decision on liability, I made the observation in my provisional decision, and repeat it here, that One Insurance's arguments on its reasoning on liability do not match the evidence which I have seen. One Insurance repeats its view, in its response to my provisional decision, that the third party "*was established*" (which I presume means "in his lane" as had been argued previously) when the video evidence suggests that when the collision occurred the other party was changing lanes.

Ultimately, my decision is that One Insurance could reasonably take the view that Mr S had some element of fault for the collision. As a result it wasn't treating Mr S unfairly when it decided that arguing against that was not reasonable or likely to succeed. But my decision is also that One Insurance has handled that decision, and its communications since, poorly. It is as a result of its actions and their impacts on Mr S that I feel that the award of £250 is justified for the reasons I have explained.

### **Putting things right**

For the reasons given above, I do not require One Insurance to revisit the question of liability as Mr S has asked for. But I do require it to pay the required compensation to Mr S for the trouble and upset that its handling of this case has caused.

### **My final decision**

One Insurance Limited should pay £250 compensation to Mr S for its faults in handling and communicating its decision on liability. I do not require it to take any further action in relation to the issue of liability.

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

John Withington  
**Ombudsman**