

## **The complaint**

Mr H complains that UK Insurance Limited (UKI) recorded a claim on his motor insurance policy as a fault and wouldn't refund his policy excess. He's unhappy that it hasn't pursued a council to accept liability for the claim.

## **What happened**

Mr H's car was damaged when he hit a pot hole and he made a claim to UKI. It accepted the claim, and his car was repaired. UKI initially pursued the council for liability, but it didn't act on its response for five months, delaying the claim.

UKI then further challenged the council, but it decided that it would be unlikely to be able to successfully defend the matter in court. So it recorded a fault claim against Mr H. UKI offered Mr H a total of £250 compensation for the impact of the delays. But Mr H was unhappy that he had to pay his policy excess and he wanted this refunded, and the claim recorded as non-fault.

Our Investigator didn't recommend that the complaint should be upheld. He thought UKI had reasonably decided to accept liability when the council had presented its legal arguments that it wasn't liable. He thought it was entitled to do this by the policy's terms and conditions. He thought it had correctly recorded the fault as it hadn't recovered its outlay. He thought the policy excess was always the first part of a claim to be paid. And he thought UKI's compensation offer was fair and reasonable.

Mr H replied that he'd driven safely for many years, and he thought the fault was a mark against him. He questioned UKI's acceptance of the council's legal defence. He thought he was being penalised because of the low claim value. He said he wasn't concerned about the policy excess, but he wanted the fault removed from his record. Mr H asked for an Ombudsman's review, so his complaint has come to me for a final decision.

## **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 can understand that Mr H feels unfairly treated and frustrated by UKI's decision to hold him at fault for the claim. I've no doubt that he is a very experienced and careful driver, and I can see that he is upset by the way the claim has been recorded. His car was repaired, but he had to pay his £400 policy excess.

Our Investigator has already explained that the "fault" doesn't mean that Mr H was to blame for the accident, but that UKI was unable to recover its outlay. This is standard industry practice, although I can understand that Mr H feels this personally.

The investigator has also explained that our role in complaints of this nature is simply to investigate how the insurer made the decision to settle the claim. Did it act fairly and reasonably and in line with the terms and conditions of the policy? And has it treated Mr H the same as someone else in his position.

UKI is entitled under the terms and conditions of its policy with Mr H to take over, defend, or settle a claim as it sees fit. Mr H has to follow its advice in connection with the settlement of his claim, whether he agrees with the outcome or not. This is a common term in motor insurance policies, and I do not find it unusual. Insurers are entitled to take a commercial decision about whether it is reasonable to contest a claim or better to compromise.

That said, we expect an insurer to reasonably investigate a claim and to consider the evidence available before making its decision on liability.

UKI pursued the council responsible for the road repairs. UKI sent it images that Mr H had provided of the road and asked it to repay its outlay and threatened litigation. It also offered to split liability.

But the council's legal service said the pothole had been identified and a target had been set for its repair. UKI said the timescale for repairs, 20 days, had been reasonable and the repairs were done in this time. But, unfortunately, Mr H hit the pothole before repairs to it could be completed. UKI said,

*"...the council have provided evidence to prove they have not been negligent in maintaining the road network regarding this particular defect."*

And so it thought it would be unable to defend the matter in court as it couldn't prove that the council had been negligent in its responsibilities.

Mr H thought this didn't make sense. And I can sympathise with his position. But UKI is experienced in these matters, and I'm satisfied that it reasonably considered the chances of successfully defending the matter. And it's then entitled to take a commercial view of whether or not to take a claim to court.

And, as UKI couldn't then recover its outlay for the claim, it recorded this as a fault on Mr H's record. I think this was fair and reasonable in the circumstances, and in keeping with the policy's terms and conditions. So I can't require UKI to amend the record or refund Mr H's policy excess.

But UKI agreed that it had made errors in the claim. It didn't tell Mr H that it was pursuing the council for liability. And it didn't act on its response to then progress liability, or tell Mr H about this, for five months.

I don't think this caused Mr H any loss as the outcome for him would have been the same. But Mr H should have been updated by UKI. And I think UKI's payment of £250 in total compensation for these errors was fair and reasonable as it's in keeping with our published guidance where delays over several months have had an impact on a consumer. I don't require UKI to do anything further.

## **My final decision**

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 March 2025.

Phillip Berechree  
**Ombudsman**