

## **The complaint**

Mrs B complains about the decision of The National Farmers' Union Mutual Insurance Society Limited trading as NFU Mutual to settle her motor insurance claim on the basis of split liability.

## **What happened**

Mrs B's car suffered damage while parked in a local council-controlled parking zone. When she returned to her car she found damage to the front bumper and a large van parked close to her car. She noted that the van had a protruding tow bar and felt that the damage was consistent with being hit by the van. Mrs B reported the accident to NFU a month later, providing photographic evidence and details of the other driver. About the same time Mrs B asked the council to retain videos which would show the arrival of her car and the other vehicle, to demonstrate that she would have already been parked when the van arrived.

NFU contacted the third-party insurer who refused to accept liability. NFU also requested video evidence from the council but was told that none existed of any incident. Eventually the insurers agreed to split liability. NFU didn't have any witness statements or video evidence to prove that the third party was entirely at fault.

Mrs B was unhappy with this outcome and complained to NFU. In response NFU paid Mrs B £300 in compensation for what it felt had been delays in handling her claim which it felt had caused her inconvenience. But regarding the decision on liability, it argued that it was not at fault. NFU explained that under the terms of the insurance policy it had the right to determine the issue of liability and didn't have evidence to allow it to insist on full liability against the third party.

Unhappy with the continued position on liability Mrs B brought that aspect of her complaint to this service. She felt the outcome was unfair and was concerned about the future impact on her insurance premiums. She argued that NFU hadn't specifically asked for the video evidence of her and the other vehicle's arrival, and that this failure had meant that the opportunity to prove her case had been lost. She argued also that the circumstances, and the photo evidence she'd supplied, made it clear that the other driver was entirely at fault.

Our investigator felt that NFU was justified in concluding liability as it had, based on the terms of the policy and the lack of clear evidence. Mrs B has asked for an ombudsman to consider the complaint. She's also shown evidence of the increased cost of her latest insurance renewal.

## **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 decision is that I do not uphold this complaint. I know that this will be extremely frustrating for Mrs B as she believes that it's clear that the other vehicle hit hers while it was parked. I will explain my decision.

Mrs B is aware that under the terms of her insurance policy NFU are entitled to settle liability on a claim. This is a common term and allows the insurer to use its experience and commercial judgment to make decisions, including whether it is viable or not to issue proceedings for the court to decide on liability, with the risks and costs involved. My role in considering complaints on the issue is to decide whether the insurer has acted fairly in the exercise of that right to decide.

Mrs B feels that the evidence is compelling in its own right and that NFU was at fault in not obtaining video evidence to help argue that case. While it's not my role to make the decision on liability myself, I feel that it would help if I explained some of the issues involved here.

NFU asked the council for video evidence using a standard request form that the council itself requires. The reply was that no video evidence was available. What seems to not be in dispute is that there was no video of any actual collision. But Mrs B feels that video evidence was available showing arrival times for the vehicles and that this would be compelling, showing that she was already parked when the van arrived and so couldn't be at fault. I understand her position but I must point out that such evidence would likely not be compelling proof. While she is sure that the van was to blame, so the only issue can be of which vehicle was parked last, that isn't the only possible outcome. She herself says that another vehicle was parked in front of her when she left the car. And other vehicles could also have been close to her car before the damage was found. While the photographs show that the damage was consistent with being hit by the van they aren't proof in themselves. While she would argue that the cause was obvious it remains that there is doubt and would still be even if the other video evidence had been available to confirm who arrived last.

In fact, when Mrs B later contacted the council about the video evidence it was explained that this would have only been retained for 30 days from the point that she requested it be kept. It's not clear precisely when the video was deleted but it would seem likely that would have occurred not long after the time that NFU submitted its unsuccessful request for video of any incident, quite possibly leaving no time to explore the matter further.

As I've explained, I don't believe that the obtaining of the video evidence that Mrs B sought would have made a material difference to the decision of NFU. For completeness I must also record that I don't hold NFU at fault for using the form required by the council to request the video evidence. I recognise Mrs B's argument that in this case a standard request might not have got the evidence that she sought but I don't think that NFU were at fault on this point.

Ultimately, it falls to NFU to decide whether it should pursue a dispute over liability which would require it to take legal proceedings. NFU has explained that in the absence of witness statements or video evidence showing the incident, it felt that taking the case to court wasn't appropriate. For the same reason I don't think that decision was unfair or unreasonable.

Again, I recognise that this will be frustrating for Mrs B. She was present on the day and is clear on her evidence. But I have to decide whether NFU acted unfairly and in my view it did not. I understand that Mrs B had protected no claims discount, that NFU have waived the excess on her claim and also that, in good faith, it has repaid her for work she had done to repair the car but for which there was no receipt. But I know that she will feel that she has suffered, through no fault of her own, with increased future premium costs. That is an unavoidable impact of any claim in which the insurer isn't able to collect the full costs from the other party and I take the view that NFU was not acting unfairly when it made the decision to settle liability on that basis.

### **My final decision**

I do not uphold this complaint against The National Farmers' Union Mutual Insurance

Society Limited trading as NFU Mutual.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 7 March 2025.

John Withington  
**Ombudsman**