

## The complaint

Mr E complains about how U K Insurance Limited trading as Direct Line (UKI) dealt with a motor insurance claim. References to UKI include other organisations and individuals acting on its behalf.

## What happened

A family member of Mr E had a lease hire car with insurance underwritten by UKI. Mr E was a permitted driver on the insurance policy.

Whilst they were out the car wouldn't start and so they called for roadside assistance. Mr E says the mechanic from the roadside assistance company lifted up the car bonnet but because the conditions were very windy the bonnet blew down and was damaged.

Mr E says the mechanic accepted responsibility for what happened and told him he should claim on the insurance, which he did, and the car was repaired and returned.

UKI recorded the claim liability as "fault" and requested Mr E pay £100 excess following the repair. Mr E didn't think he was at fault for the damage and considered the liability recording to be incorrect. Mr E also believes that because this is factually incorrect it is a breach of the Data Protection Act.

Because Mr E didn't consider the damage to be his fault, he didn't think that he should be required to pay the £100 excess, and he is distressed that this payment was requested. Mr E is also concerned that if he had to take out insurance in the future his insurance premiums would increase because of the liability recording.

Mr E complained to UKI about this and some customer service issues. UKI said:

*"On the advice of the [roadside assistance] technician, you called to report this to [UKI] who advised that a claim needed to be logged and there was a £100 excess applicable. I understand that you were told differently by the [roadside assistance] technician unfortunately he has miss advised you and your excess is applicable.*

*Due to the damage to your vehicle being caused by the winds [UKI] cannot hold the [roadside assistance company] responsible for the damage we therefore have nobody to claim from. In cases where there is no Third Party to claim from your policy excess is applicable.*

*In view of the above the correct process has been followed I therefore do not uphold your complaint."*

Mr E wasn't happy with what UKI said and complained to this service. Our investigator contacted UKI and it offered to pay Mr E £150 compensation for the customer service issues. Our investigator thought that this was a fair settlement, but otherwise didn't uphold Mr E's complaint. He said insurers generally record liability as either fault, non-fault or split liability. A claim is recorded as fault when either the person making the claim is considered

at fault or when there is no third party to recover costs from.

He said that while it was clear that Mr E was not responsible for the gust of wind causing damage to the car, UKI didn't consider the roadside assistance company to be responsible either. This meant that there was no third party that UKI could reclaim the costs of the repair from. Because of this, the claim was recorded as a fault claim, which UKI was entitled to do under the terms and conditions of the policy. As no inaccurate information was recorded, the investigator found it was in line with Data Protection Act principles.

The investigator said no information had been provided to show that Mr E's future insurance premiums would be affected by the fault recording.

In relation to the excess, the investigator said that it appears that the hire company has now paid this so there is nothing outstanding.

Mr E wasn't happy with what the investigator said so his complaint has been passed to me. Mr E wants UKI to change its liability decision and compensate him for the distress and inconvenience caused.

### **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 uphold Mr E's complaint in relation to the customer service aspects but not in relation to the liability decision or excess. I'll explain why.

Firstly it's important to say that it's not my role to decide on liability for a claim. Ultimately that is something only a court can decide. My role is to decide whether UKI dealt with the claim fairly and reasonably and in accordance with the policy terms and conditions.

Insurance claims are frequently recorded on the Claims and Underwriting Exchange (CUE). CUE is a database of motor, commercial motor (including motor fleet), home, commercial property and personal injury incidents. Not all insurers are signed up to CUE, but the majority are. If an insurer is signed up to CUE, it will make a record of any incident it's made aware of and whether it leads to a claim or not.

The insurance industry records claims on CUE as either:

- bonus disallowed (fault)
- bonus allowed (non-fault)
- incident/notification only.

Importantly, if a claim is recorded as "bonus disallowed" or "fault" this doesn't always mean the consumer is to blame for the incident. An insurer usually records a claim as "bonus disallowed" on CUE when it's unable to recover all its costs from another party (usually the other driver's insurer). Sometimes on the insurer's systems this will be recorded as a "fault" claim. Insurers will often use the term "fault", rather than "bonus disallowed", when dealing with consumers.

If the insurer does recover all their costs then the claim is recorded as “non-fault”. Incidents can also be recorded as “notification only”. This is when consumers let their insurers know they've been involved in an incident – usually minor – but neither party make a claim.

So Mr E isn't being blamed for the incident – instead the “fault” recording means that UKI hasn't been able to recover all its costs.

The insurance policy documents for the car said:

*“Following a claim we are entitled to do either of the following; - Take over and carry out negotiation, defence or settlement of any claim in your name, or in the name of any other person covered by the insurance benefits and/or the contract hire agreement...”.*

This term essentially gives the insurer a contractual right to settle the claim how it chooses. It doesn't need the agreement or consent of the policyholder. This meant that UKI could decide how to settle a claim, including deciding on liability and recording fault.

But just because the term is in the policy, we don't think it's fair and reasonable for the insurer to simply do as it pleases. The ultimate decision, even if cost related, still has to be based on facts and evidence.

Mr E told UKI that the damage was caused when the wind blew the car bonnet down. Mr E said the roadside assistance mechanic accepted that this was his fault, but Mr E was unable to provide UKI with any proof of this. So I think it was fair and reasonable for UKI to record the claim as fault. Because I don't believe this is factually incorrect, I don't think it was a breach of the Data Protection Act, however it is open to Mr E to complain to the Information Commissioner's Office if he still believes it is.

Because the claim was recorded as “fault”, under the terms of the insurance policy UKI was entitled to ask Mr E to pay the excess. However I understand that the issue regarding the excess has now been resolved as the hire company has paid it.

UKI told our investigator that upon reviewing the complaint it believed the decision made was fair, however there was an email from Mr E which wasn't responded to, and the alleged Data Protection breach appeared not to have been investigated. In view of this UKI said it would like to award £150 in compensation. I think this is fair and reasonable and in line with what this service would award in the circumstances.

### **My final decision**

For the reasons given above I uphold Mr E's complaint in part. I require U K Insurance Limited trading as Direct Line to pay Mr E £150 in recognition of the distress and inconvenience caused by its failure to respond to an email from Mr E and the alleged Data Protection breach which wasn't investigated.

If U K Insurance Limited trading as Direct Line has already paid the £150 it offered to Mr E, then it doesn't need to take any further action in relation to the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 21 February 2025.

Sarah Baalham  
**Ombudsman**