

The complaint

Miss F complains about how Haven Insurance Company Limited (Haven).dealt with a claim under her motor insurance policy, deeming it to be a fault claim and affecting Miss F's No Claims Discount (NCD).

References to Haven in this decision include their agents.

What happened

In October 2023 Miss F was involved in a collision with a third party vehicle (a motorbike). The third party insurer reported the incident to Haven, saying the motorbike was proceeding correctly when Miss F was turning right to enter a side road, causing the collision.

Haven tried to contact Miss F through various means (including phone, text and email) to ask her to contact them to discuss the accident, but initially didn't receive a reply. They then wrote to Miss F advising if she didn't contact them they wouldn't accept a claim from her and may not deal with any third-party claim. Haven subsequently wrote to say that as she hadn't notified them about the accident within the period required under the policy, she was in breach of the policy conditions and cover wouldn't be provided.

Miss F was contacted by her broker to advise her Haven held her to be in breach of the policy condition requiring a policyholder to co-operate with them. Miss F then contacted Haven, disputing the third party version of events, saying she was turning right but had stopped at the entrance to the side road to allow what looked like a pedestrian to pass when the third party collided with her vehicle (at speed). She said she had photographs taken at the scene of the accident and a witness who supported her version of events. It also emerged Miss F had changed her contact details (mobile phone and email) but Haven weren't aware of the change.

Haven considered the circumstances of the accident and concluded Miss F was at fault for the accident. This was based on her turning right and the motorbike would be considered a vulnerable road user. And even if they contacted the witness, they wouldn't be able to confirm how long Miss F was stationary while making the turn. Should the matter go to court, Haven said Miss F turned across the path of the motorbike (which they said was shown by the photographs provided by Miss F). Haven subsequently settled the third-party claim.

Miss F didn't make a claim under the policy for damage to her vehicle (she was involved in a second accident in June 2024 which resulted in the total loss of her vehicle, for which Haven made a settlement).

However, Miss F remained unhappy at how Haven had handled the accident involving the motorbike and accepting liability for the accident without contacting her. So, she complained.

In their final response Haven didn't uphold the complaint. They said they'd tried to contact her through different means, and while Miss F had changed her mobile and email details, she should have received letters sent by post to her home address. Haven also said that review of the circumstances of the accident, including both party's version of what happened, they maintained their decision to determine liability against Miss F. They also

noted the policy terms gave them the right to take over a third-party claim made under the policy and conduct the defence and settlement of any such claim.

Miss F then complained to this Service. She was unhappy at Haven's decision to hold her liable for the accident and that they accepted liability without confirming with her first. Also, they hadn't contacted her about having her vehicle repaired as a claim under the policy. She was also unhappy at the decision on liability meaning her NCD was lost. She wanted her NCD restored, a refund of the cost of repairing her vehicle and compensation for the time she'd spent dealing with the matter and the distress it had caused her.

Our investigator didn't uphold the complaint, concluding Haven didn't need to take any action. She noted Haven had tried to contact Miss F about the accident, using the contact details they had when Miss F took out the policy in August 2023. However, Haven weren't aware of the change to her phone number and email address, although it wasn't clear why Haven weren't aware of the changes (it may have been the broker didn't pass on the changes to Haven). But they did write to Miss F at her home address. The investigator also noted she hadn't told Haven about the accident when it occurred, when the policy required notification of an accident or incident that might lead to a claim on the policy within 24 hours.

On liability for the accident, the investigator noted Haven considered the circumstances of the accident, including the respective version of events from Miss F and the third party. They considered the likelihood of success were the matter to go to court and concluded they wouldn't be likely to win. So, the investigator concluded Haven acted within the policy terms in deciding to settle the claim from the third party.

On Miss F's point about Haven not offering repairs to her vehicle, the investigator concluded Haven couldn't be responsible for repairs not being offered (or completed) until Miss F contacted them nearly a month after the accident. And the onus would be on Miss F to make a claim for the damage to her vehicle and ask Haven to arrange repairs. Call records indicated Miss F didn't want to make a claim for the accident (but she did for a subsequent incident). So, Haven weren't responsible for Miss F's vehicle not being repaired after the accident with the motorbike.

Miss F disagreed with the investigator's view and asked that an ombudsman consider the complaint. She said Haven should have offered to make repairs to her vehicle and that she did initially want to make a claim but felt pressured into not doing so and changed her mind. On Haven attempting to contact her, the first she knew was when contacted by her broker. Haven could have checked with her broker that they had the correct contact details for her.

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 Haven have acted fairly towards Miss F. In doing so, I've focused on the issues raised by Miss F when bringing her complaint to this Service, as set out in the next paragraph. Haven's final response (October 2024) covers the issues but doesn't consider any issues regarding the claim Miss F made in June 2024, which led to her vehicle being deemed a total loss. So, this decision doesn't consider this aspect.

There are several main issues in Miss F's complaint, within the overall handling of the incident and claim by Haven, including their communication with her. These include Haven's decision to accept liability for the accident and settle the third party claim, Haven not being able to contact Miss F initially as they didn't have the correct contact details for her, and Haven not offering to make repairs to Miss F's vehicle.

On the first issue, I recognise Miss F feels she wasn't at fault for the accident and that she had a witness to support her version of events. But it's not for 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 Haven acted fairly in the circumstances of the accident.

From what I've seen, Haven did consider the circumstances of the accident and the respective versions of events provided by Miss F and the third party. They also considered the photographs of the incident provided by Miss F. From this, they concluded they should accept liability as Miss F was turning into a side road and the third party proceeding when the collision occurred. So, Miss F was turning across the path of the motorbike (or was stationary in the path of the motorbike). They also considered that as a motorbike, the third party would be considered a vulnerable road user.

On the potential witness, Haven considered this but concluded they wouldn't be able to prove the time Miss F was stationary when waiting for what she thought was a pedestrian wanting to cross the road. And there was no other independent evidence (such as dashcam or CCTV) to support Miss F's view she wasn't at fault. They also considered the likelihood of success were the matter to go to court. Taking all the circumstances into account, they concluded they were unlikely to be successful.

The policy terms, as they do in motor insurance policies more generally, provide for Haven to assess claims and determine liability. The relevant wording referred to by Haven in their final response states:

- 1. We are entitled to take over any third-party claim against you (or any other person claiming under this policy) and to conduct the defence or settlement of any such third-party claim in your name or the name of any person claiming under this policy."*

As well as giving Haven the ability to determine liability and settle a third party claim, they also don't require this to be agreed with the policyholder. Haven accepted liability shortly before Miss F contacted them but did discuss the accident circumstances with Miss F before confirming their decision on liability (by email in early-November 2023) and then discussing further when Miss F challenged their decision.

So, I've concluded Haven acted reasonably in concluding they would have to accept liability for the accident.

In accepting liability, Haven would also record the claim as a fault claim against Miss F. In turn, this would affect her NCD. Depending on the terms of the policy and whether Miss F had protected her NCD, then Miss F's NCD would have been affected. Looking at the Statement of Fact issued when the policy was taken out, it indicates Miss F had three years' NCD, but the policy didn't include NCD protection. Looking at the policy booklet, there's a table that sets out the impact of making a claim(s) on NCD. For three years' NCD, a fault (or split liability) claim would reduce the NCD to one year. In this case, as Miss F had a subsequent claim in June 2024 (the same policy year) then if that was assessed as fault or split liability, then her NCD would reduce to nil.

So, as I've concluded Haven acted fairly in deeming the accident with the motorbike as a fault claim, then Miss F would have had her NCD reduced to one year. But the second claim, if a fault claim, would have reduced it to nil. If that is the case, then Haven have acted fairly in line with the policy conditions.

On the issue of Haven not contacting Miss F about the accident, as set out earlier, Haven tried to contact Miss F through phone, email, text and then letter. Miss F says she notified Haven of the change of her phone number and email address. But Haven used her old phone and email details to try and contact her. Their claim notes record the dates this happened, including voicemails they left on the number they had for Miss F (which would suggest the number was in use). And then letter when earlier attempts to contact Miss F by phone were unsuccessful. Miss F phoned Haven at the beginning of November 2023, following contact from her broker advising of a notice of cancellation letter from Haven (for non-co-operation). Haven's claim notes of the call from Miss F records their being told they have an incorrect number for Miss F.

Miss F points to a Statement of Fact issued in September 2023 which included her correct contact details. Haven say they weren't aware of this. From what I've seen, this Statement of Fact was issued by the broker, as a 'mid-term adjustment' to the policy (which was inceptioned in mid-August 2023). So, it may have been Miss F told the broker of her changed contact details, but this didn't get communicated (or picked up) by Haven. For their part, Haven have provided the Statement of Fact issued when the policy was taken out, which records different phone numbers and email addresses. As this was issued at policy inception, these would have been the contact details recorded by Haven and subsequently used. But the home address was the same, so any letters sent should have been received.

In the circumstances, I can't reasonably hold Haven responsible for trying to contact Miss F on old contact details. And, as I'll come on to when considering the issue of repairs not being offered to Miss F, had Miss F notified Haven of the accident when it happened – as the policy requires – any confusion or out-of-date contact details would have been likely to become apparent (and corrected/updated) at that point.

I've then considered the point made by Miss F that Haven didn't offer to repair the damage to her vehicle from the accident. However, it is Miss F's responsibility to notify Haven of an accident or incident and to lodge a claim for any damage to her vehicle. The policy includes a specific requirement to notify Haven of an accident or incident when it occurs. The relevant wording (on the first page of the policy booklet) states:

"Any accident/incident which may give rise to a claim on this policy must be reported to us within 24 hours of occurring."

It's not clear why Miss F didn't report the accident to Haven at the time it occurred, which would have provided her with the opportunity to tell Haven what happened, give her version of events (including her view that she wasn't at fault) together with any evidence or information, such as witness details, dashcam or potential CCTV coverage. As it was, Haven only became aware of the accident when contacted by the third-party insurer, when lodging a claim. At that point, it was reasonable for Haven to try to contact Miss F to obtain more details of the accident and her version of what happened.

Coming back to the issue of repairs, I've also considered that if Miss F had wanted her vehicle repaired after the accident, she could have contacted Haven to make a claim and request repairs. As it was, she didn't tell Haven about the accident until they contacted her (the broker telling her about notice of policy cancellation). Haven make the point that had the third party insurer not contacted them to make a claim, it's unlikely they would have known about the accident. Their claim notes record Miss F accepting this (in September 2024).

While call recordings do include Miss F indicating she didn't want to claim, Miss F says she felt pressured into not making a claim. However, I haven't seen anything to support this. And as I've said, the onus is on Miss F to make a claim.

So, I've concluded Haven didn't act unfairly or unreasonably.

While not the subject of Miss F's complaint to this Service, I've noted Haven settled a subsequent claim from Miss F in June 2024 where they deemed Miss F's vehicle a total loss. The settlement didn't make any deduction for pre-existing damage there may have been from the earlier accident with the motorbike. So, Miss F has not lost out in this respect from not having her vehicle repaired at the time of the accident.

Taking all these points into account, I don't think Haven have acted unfairly or unreasonably in the circumstances of this case, so I won't be asking them to do anything further.

My final decision

For the reasons set out above, it's my final decision not to uphold Miss F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 4 April 2025.

Paul King
Ombudsman