

## **The complaint**

Mrs K has complained about the way U K Insurance Limited trading as Darwin (UKI) dealt with her claim under her motor policy following an accident.

## **What happened**

Mrs K was involved in an accident on 4 December 2023. She said the other driver turned into her lane causing the accident. She had dashcam footage which she supplied to UKI. Mrs K's car was deemed a total loss and has been dealt with by a separate complaint and ombudsman's decision.

The other driver and their insurers contested liability. So, for the time being Mrs K's insurance record shows she is being held at 50% liable for causing the accident by UKI. Mrs K complained about this.

UKI issued its final response letter on 24 February 2024. It noted Mrs K had complained about the fact her excess had not yet been refunded, that she was distressed that salvage agents kept phoning her to arrange to collect her car, that she was unhappy she had never been offered a hire car, and that her claim has not been progressed, and the liability stance UKI has taken over her claim. UKI didn't uphold Mrs K's issue with the excess as that can't be dealt with until liability is settled. It explained that as it had paid the market value of the car to her, the car then becomes its property which is why the salvage agents are trying to collect it. It explained that because her car was deemed a total loss the policy doesn't permit her to be given a hire car. As regards the liability decision it didn't think the dashcam footage was enough to show the other driver was fully at fault. It explained the policy permits it to decide liability as it thinks fit. UKI agreed there was a lack of progression in dealing with her claim, so it paid her £150 compensation for this.

Mrs K remained dissatisfied and brought her complaint to us. The investigator noted the issue of liability remains ongoing. However, she thought UKI's payment of £150 compensation was sufficient for the initial lack of progression.

In the meantime, UKI told Mrs K on 31 December 2024 that the other driver's insurers had accepted full liability for the accident and that it was now seeking its costs from these insurers in order to finalise her claim. It also raised a separate complaint about the partial refund of her premium so that is also being dealt with separately by UKI.

Mrs K remained dissatisfied, so her complaint has been passed to me to decide.

## **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.

Having done so, I'm not upholding this complaint. I do understand Mrs K will be very disappointed, but I'll now explain why.

First as Mrs K's complaint about the market value of her car is being dealt with in a separate complaint in this service, I am not permitted to deal with any aspects of Mrs K's concerns about that in this complaint. So, this complaint will solely deal with the liability aspect of her along with her complaint about the lack of progression.

I can see that liability has now been accepted by the other driver's insurers and UKI is now sorting out the refund of its costs which should in turn finalise the matter with Mrs K having a non-fault claim on her insurance record. That should also deal with the refund of the excess Mrs K had to pay in relation to her car. Excesses are uninsured losses and can only be refunded when the other driver's insurers have accepted liability. It is not a loss that's insured under Mrs K's policy and would also be payable by her in the event of any accident. Further until UKI receives the ombudsman's decision on the outcome of her complaint over the market value of her car, it will be delayed in sending its costs to the other party for settlement. I understand that is due imminently.

So, I can appreciate why Mrs K found dealing with UKI difficult, given she is not from the UK so many of the aspects of how claims following accidents are dealt with by insurers would not have been familiar to Mrs K.

Essentially how any motor insurer deals with accident claims is governed by the policy wording which in turn adheres to the regulations as set out by the regulator the Financial Conduct Authority (FCA). In relation to deciding liability, the policy gives UKI sole control to decide this as it thinks fit. This is a common term in every motor policy, so I don't find it unusual or significant. The policy states the following:

*'Claims procedure - Our rights and your obligations*

*We are entitled to:*

*take over and carry out the negotiation, defence or settlement of any claim in your name, or in the name of any other person covered by this policy:*

*take proceedings in your name, or in the name of any other person covered by, and in connection with this policy for your or our own benefit.'*

Unless or until the other driver's insurers accepted Mrs K's version of events, in many respects UKI's hands are tied, unless it feels the matter is worthy of being litigated in the courts instead. Since it would be UKI who funds any such court proceedings and who would be at risk at paying the other insurer's court costs, it's not a decision which is taken lightly unless the circumstances make it very clear indeed. So, I don't consider UKI's stance on liability was unfair until the other driver's insurers decided to accept their insured was responsible for causing the accident.

So, although UKI accepted it hadn't progressed matters initially as quickly as it should have given delays by the other driver's insurers too, I do consider its payment of £150 compensation to Mrs K in its final response letter is sufficient, to include any such delays afterwards up to when the other driver's insurers finally capitulated in December 2024. Sadly, these matters can take this length of time. So, I don't consider it needs to do anything further here.

As regards Mrs K not being given a courtesy car, it's standard that the general provision for courtesy cars only occurs if the policyholder's car is being repaired. If the car is classed as a

total loss, then there tends to be no entitlement to a courtesy car unless Mrs K paid extra premium for a guaranteed courtesy car which I understand wasn't the case here. So, I don't consider UKI did anything wrong here.

Lastly as regards the salvage agents calling Mrs K about picking up her car, this is also standard in cases where a car has been deemed a total loss. I appreciate Mrs K didn't want to give the car up to the salvage agents until her issues with the total loss payment were concluded but as UKI had forwarded her the funds for its valuation of her car, then the salvage agents weren't doing anything wrong in calling Mrs K about collecting her car.

I can see Mrs K's experience genuinely upset and distressed her. However, the policy wording does explain how matters will be dealt with by UKI. Being involved in any accident like this is very distressing in itself, and I can imagine how confusing Mrs K found the process of dealing with such matters here too. UKI did delay initially but it paid her compensation of such a value that I consider it includes compensation for any delay since. Sadly, the process can be long winded and not everything is in UKI's hands since it has to wait for the other driver's insurers also. So overall I consider it proceeded things in line with the policy terms and conditions and consequently, I don't consider it needs to do anything further.

### **My final decision**

So, for these reasons, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 1 May 2025.

Rona Doyle  
**Ombudsman**