

The complaint

Mr P has complained about U K Insurance Limited (UKI). He isn't happy that it held him fully liable for a claim made on his motor insurance policy.

Mr P's policy is branded in the name of the intermediary which administers it. But it is underwritten by UKI. UKI is responsible for all claims decisions. So I will only refer to it here.

What happened

Mr P's car hit the passenger door of another car, after the passenger opened their door while Mr P was reversing. Mr P made a claim under his motor insurance policy. He sent UKI dash cam footage of the incident. UKI looked into the claim. Having done so, it held Mr P at fault for the accident. As a result he had to pay his excess, it affected his no claims discount and future insurance premiums.

Mr P wasn't happy about this and complained to UKI. He thought the other driver's passenger should have been aware he was reversing and shouldn't have opened their door. So Mr P thinks he shouldn't be held at fault for the accident.

UKI didn't uphold Mr P's complaint. After reviewing the matter including the dash cam footage it said this showed that the passenger concerned didn't check it was clear to open the door, but that the onus was on Mr P as the reversing driver to ensure the way was clear to continue the manoeuvre.

Mr P didn't agree with UKI and brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. She thought UKI had considered liability fairly when concluding that Mr P was at fault for the accident. As Mr P didn't agree the matter has been passed to me to arrive at a final determination.

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.

When arriving at my conclusion I've considered everything on file including all the comments Mr P sent to us in response to our Investigator's complaint assessments. However, in this decision I don't intend to comment on each and every issue raised. Instead I will focus on what I see as being the key issues at the heart of Mr P's complaint and the reasons for my decision.

I can understand how difficult and frustrating Mr P has found all of this. I say this as Mr P feels that the passenger who opened their door should have seen that he was reversing and done more to avoid the accident.

I'll repeat, as our Investigator has previously explained, that it isn't the role of this service to decide liability. Ultimately that's a matter for the courts, even where, as I understand is the case here, both cars involved in the incident are insured by the same insurer. Rather than deciding liability my role is to look to see if insurers have acted in a fair and reasonable way.

UKI, like most motor insurers, have a clause in the contract that allows it to settle a claim as it sees fit. This gives it the right to decide who it believes is liable for a claim, whether that liability should be full or shared or indeed whether or not the matter should be decided in court. But we look to ensure that insurers act fairly in deciding whether to settle matters and make a reasonable assessment of the claim - based on a clear understanding of the evidence and circumstances surrounding the accident. With this in mind, I have carefully considered how UKI handled Mr P's claim.

It is the case that UKI came to a decision that Mr P was fully at fault for the claim fairly quickly. But I don't think that's because it didn't give the matter adequate consideration. Mr P's evidence was that he was reversing and the passenger opened their door while doing so but before the collision occurred. Mr P believes the passenger didn't take appropriate care before opening the door. He believes they should have seen that he was reversing and not opened the door. But given Mr P was reversing all insurers I'm aware of would say that the greater onus was on him to ensure it was safe to continue to do so, throughout the manoeuvre, which was the reason for UKI's decision. And so I don't think UKI acted unreasonably in its initial conclusion that Mr P was at fault.

However, even if I had concluded that UKI, initially, came to its conclusion without giving the matter sufficient consideration, on receipt of Mr P's complaint, it reviewed the matter. I think that was the appropriate action for it to take in the circumstances. But UKI told Mr P that it hadn't changed its view. And, having considered that evidence I can understand why it arrived at that conclusion.

The footage clearly shows Mr P reversing, the passenger then opened their door a small amount before closing it again. They then opened the door again a few seconds prior to Mr P continuing to reverse into it. I can see from UKI's notes that it believed Mr P should have looked to see if it was safe to continue with the manoeuvre, after the passenger opened their door (a second time), but didn't do so, which caused the accident. So it's held him fully liable for the incident. And having considered the dash cam footage I think it gave appropriate weight to that evidence and its conclusion was reasonable in the circumstances.

Mr P has referred to excerpts from the Highway Code and The Road Vehicles (Construction and Use) Regulations 1986 (CUR) in support of his arguments that the passenger should be held at fault or partly at fault for the incident. I recognise that UKI hasn't addressed these points head-on. But I don't think these references help Mr P's arguments concerning liability.

As I've indicated above it's not my role to decide on who's at fault for a claim. So it doesn't fall to me to decide on whether or not individuals have acted in accordance with the relevant guidance and regulations. But, I may comment if I believed an insurer had failed to consider the appropriate rules or regulations or had misinterpreted those and in so doing treated the consumer involved unfairly. However, I don't think that's the case here.

Given the frustration that this matter has most likely caused Mr P I think it might be helpful if I set out my understanding of how insurers like UKI will consider such matters.

The Highway Code paragraph Mr P has referred to says:

*"you **MUST** ensure you do not hit anyone when you open your door. Check for cyclists or other traffic by looking all around and using your mirrors."*

However, the passenger concerned did not hit anyone when they opened the car door. And while it seems likely they didn't use their mirror before doing so I don't think any insurer would reasonably say that's what caused the collision. I think most insurers would conclude,

as UKI did, that Mr P had enough time to stop, regardless of whether or not the passenger had adequately used their mirror before opening their door.

Similarly, the CUR regulation says:

“No person shall open, or cause or permit to be opened, any door of a vehicle on a road so as to injure or endanger any person.”

But, in this instance I think most insurers would reasonably decide that the passenger did not injure or endanger another person when opening their door. They would argue that Mr P had adequate time to stop his manoeuvre. But he didn't and it was his continuing to reverse after the door was opened that caused the incident. So, while UKI didn't respond to these points explicitly I don't think it would be reasonable to conclude that it overlooked, misinterpreted, or didn't apply appropriate weight to them.

It follows that I'm satisfied that UKI adequately considered the evidence and the relevant rules and guidance. As such I think it arrived at a fair and reasonable conclusion and I don't require it to take any further action.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 May 2025.

Joe Scott
Ombudsman