

The complaint

Mrs A and Mr W have complained about the liability decision U K Insurance Limited (UKI) made on a claim made under their motor insurance policy.

What happened

The details of this complaint are well known to both parties, so I will not repeat them again in full detail here. But to briefly summarise, Mrs A and Mr W are the policyholder and named driver, respectively, under the motor insurance policy the claim has been made under. They are unhappy with UKI's decision to accept they were jointly at fault for the accident.

Mrs A and Mr W are also unhappy that UKI advised they would pursue 0% liability with the third-party driver, including going to court if necessary, before later accepting 50% liability without further discussion with them.

In its final response letter, UKI confirmed it settled on a 50/50 split liability due to conflicting versions of events and a lack of other available supporting evidence. UKI acknowledged that one of its call handlers provided misleading information about how it would continue to pursue the matter. UKI apologised for this and offered £100 compensation for the loss of expectation it had caused.

An investigator at the Financial Ombudsman Service considered Mrs A and Mr W's complaint but he didn't think it should be upheld. He said UKI's decision on liability was fair and reasonable in light of the available evidence. He agreed the call handler had provided incorrect advice, but didn't think it would be fair to hold UKI to the incorrect information. He felt the apology and offer of compensation was sufficient to put things right.

Mrs A and Mr W didn't accept the investigator's assessment. So, as no agreement has been reached, the complaint has been passed to me.

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, while I appreciate it will likely come as a disappointment to Mrs A and Mr W, I agree with the investigator's conclusions. I'll explain why.

Insurers are entitled to accept liability on behalf of their policyholders as it's ultimately the insurer who will pay to settle the claim.

It's not the role of the Financial Ombudsman Service to decide which driver is at fault in a dispute like this. Instead, I need to consider whether UKI reached a reasonable decision in light of the evidence. In order for its decision to be reasonable, I'd expect UKI to be able to evidence that it undertook suitable investigations before reaching a decision on liability.

I think it's also helpful to explain that while the terminology used in liability disputes refers to 'fault', this doesn't necessarily mean that an insurer considers their driver to be at fault for the incident. Instead, claims are recorded as 'fault' where an insurer has been unable to recover their outlay on a claim from a third-party.

What the above means for Mrs A and Mr W's claim, is that for UKI to have successfully recorded this claim as 'non-fault' it would have needed to get the third-party insurer to accept that their driver was 100% responsible for the accident and to have agreed to cover the full cost of the claim.

In this case Mrs A and Mr W's version of events conflicts with the third-party driver's version of events. They say they were reversing out of a bay in a car park when they stopped, and that the third-party then collided with them while they were stationary. The third-party says both cars were moving at the point of collision.

Where there are conflicting versions of events, I'd expect the insurer to carry out thorough investigations into any other available evidence which might be able to support their policyholder's version of events. And I can see that UKI considered the numerous photos provided by Mrs A and Mr W before reaching its decision. However, UKI's view is that the photos in isolation are not sufficient to demonstrate which of the cars were or weren't moving at the point of the impact – which is the key issue in this case when deciding whether one or both parties are at fault for the incident in these circumstances.

In addition to the photos, I'd expect UKI to explore whether there might have been any witnesses to the accident, or any available CCTV or dashcam footage which could help. But based on the incident report Mrs A and Mr W provided, none were available. So, based on the fact that there was no other available evidence to support which version of events was correct, UKI and the third-party insurer agreed on a 50/50 split liability.

Taking into account the conflicting versions of the events and the lack of any other supporting evidence, I think it was reasonable for UKI to conclude that it wouldn't be able to persuade, or compel, the third-party insurer to accept 100% liability for the accident. And as the third-party had maintained it was willing to settle on a 50/50 split, based on the conflicting evidence, I think it was reasonable for UKI to decide these were the best available terms on which it could agree liability.

Based on the above, I'm satisfied that UKI's decision to accept a 50/50 split liability was in line with the terms and conditions of Mrs A and Mr W's policy, and that it was fair and reasonable in all the circumstances.

Mrs A and Mr W have also complained that UKI told them it would continue to defend their position on liability, including taking it to court if necessary. They've referred to the legal principle of estoppel, and said UKI should not be able to go back on that promise to them.

My role as an Ombudsman is to decide what I consider to be fair and reasonable in all the circumstances. And while I can appreciate Mrs A and Mr W's frustrations about being promised something that later turned out to be incorrect, I don't consider the fair way to put that right to be to force UKI treat the incorrect advice as though it was correct. Instead, I think the fair way to put this right would be to consider the impact of the incorrect advice and pay suitable compensation to reflect that. Particularly in this case because, even if UKI continued to pursue 0% liability, it's unlikely it would be able to obtain a better split than it has already, given the lack of available supporting evidence and the conflicting versions of events.

I fully accept it would have been both frustrating and disappointing to be told one thing and then to have the opposite happen. But I think UKI's acknowledgement of the mistake, apology and offer of compensation are sufficient to fairly put things right in the circumstances of this complaint.

Ultimately, I'm satisfied that UKI reached a fair and reasonable decision on liability in this case, and that its apology and offer of compensation are sufficient to put right the loss of expectation it caused when incorrectly promising to take the matter to court if it couldn't agree 0% liability.

My final decision

For the reasons I've explained above, I don't uphold Mrs A and Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr W to accept or reject my decision before 13 June 2025.

Adam Golding
Ombudsman