

The complaint

Mr G complains about the handling of his motor insurance claim by Watford Insurance Company Europe Limited (Watford).

What happened

The following is intended as a brief summary of events. Mr G's car was involved in an accident in October 2023 whilst being driven by his daughter. He contacted Watford to make a claim under his policy. Watford investigated matters and determined that Mr G's daughter was not authorised to drive the car under Mr G's policy. Watford decided to cancel the policy as Mr G had allowed an uninsured driver to use his car, and they said he would be held liable for the accident and ultimately responsible for the costs of the third-party claim.

Mr G thought this was unfair – he raised a number of issues around how Watford had handled the claim, including: the costs of the third-party claim, a lack of communication and transparency throughout the claim process, how they had investigated liability, and the fact that Watford ultimately cancelled his policy.

Watford considered the complaint but didn't think they'd done anything wrong. They said they had concluded Mr G's driver would be held at fault based on the statement of a third-party witness, and that as Mr G's daughter hadn't provided full information to them, they would deal with the claim on best possible terms. They also said as his daughter was driving his car while not named on the policy, the policy terms allowed them to recover the third-party's costs from him.

Mr G remained unhappy with Watford's response, so he brought the complaint to this Service. An Investigator looked at what had happened and ultimately recommended the complaint should be upheld in part. He said Mr G's daughter had taken out a policy which she thought covered her to drive Mr G's car; but it later turned out that the policy was provided through a 'ghost broker' so it didn't actually exist.

The Investigator said as Mr G didn't make Watford Insurance aware of the ghost broker policy prior to the policy being cancelled, he thought Watford had exercised their rights under the policy reasonably and had acted fairly by cancelling the policy when they did - as the information available to Watford Insurance at the time demonstrated that Mr G had knowingly allowed an uninsured driver to use the car.

But in light of the new information about the ghost brokered policy, Watford did offer to remove the cancellation marker from external databases. And they also agreed to refund the premiums paid for any time not on cover and offset these against the claim costs incurred by the third-party.

In relation to liability, the Investigator didn't think Watford had acted fairly. He said they had asked for information from Mr G's daughter but didn't think this was in and of itself important enough to completely concede liability. He thought Watford should only seek to recover 50% of the third-party claim costs and should pay Mr G £450 compensation.

Watford agreed with the majority of the Investigator's recommendations – except for the conclusions on liability. They said Mr G's daughter was made fully aware that in the event she didn't respond or was unable to assist in providing the information Watford had asked for, a decision would be made to deal with the claim on best possible terms. They said a decision was made in January 2024 to deal on best possible terms as Mr G's daughter hadn't given them the postcode of her departure location on the night of the accident, which they said they needed in order to complete a statement of truth to be relied upon in court if required.

They said Mr G's daughter was unreliable throughout the claim and not someone that could have been relied upon if the matter ran to court, which is why they decided to settle the claim on a fault basis.

Mr G said he appreciated the Investigator's efforts in trying to resolve the complaint but maintained he felt the third-party claim wasn't completely legitimate, and he felt he had been left holding the brunt of the costs.

I issued a provisional decision of this complaint, and I said the following:

"I want to start by explaining I won't be repeating the entirety of the complaint history here in my decision or commenting on every point raised. Instead, I've focussed on what I consider to be the key points that I need to think about in order to reach a fair and reasonable conclusion. This reflects the informal nature of this Service and our key function; to resolve disputes quickly, and with minimum formality.

However, I want to assure both parties I've read and considered everything provided. As the complaint currently stands, Watford have agreed to some of the recommendations the Investigator made as part of their review of the complaint. I've considered the reasons behind these issues, and I'm satisfied they produce a fair and reasonable outcome to this complaint. I don't intend to rehash the entirety of the complaint here, but broadly:

- I agree it was fair and reasonable for Watford to cancel the policy in the way they did initially; given Mr G made no mention of the ghost brokered policy when he contacted Watford to discuss the claim. However, given this issue has now been raised and they've agreed to remove the cancellation marker from external databases, I find this to be fair and reasonable.*
- Additionally, Watford also agreed to reduce the amount they are seeking to recover from Mr G by the amount of premium refund that would have been due at the point of cancellation.*

Given the information around the ghost brokered policy only came to light later in the claim process, I find that it was reasonable for Watford to act in the way they did at the time and based on the information available to them. And now that's changed, they've agreed to make changes to reduce the impact to Mr G. I find these actions to be fair and reasonable.

The remaining issues for me to decide are the claim decision Watford made, whether it would be fair and reasonable for Watford to only seek to recover 50% of the claim costs from Mr G, as well as whether they should pay compensation. I've addressed each of these issues in turn below, for ease of reference.

Liability decision

Under Mr G's policy, Watford have the right to take over and settle a claim on his behalf. I can see this in Mr G's policy wording under "General Conditions" - it says:

"We, as Your Insurer, can:

- take over and conduct the defence or settlement of any claim; and*
- take legal action over any claim.*

These actions may be taken in Your name or the name of any insured person. Failure to notify any required changes and to take reasonable care to ensure that any information supplied is provided honestly, fully and correctly may result in Your Policy being cancelled or treated as if it never existed, or in Your claim being rejected or not fully paid."

This is a common term in most insurance policies which allows insurers to make a commercial decision about whether it's reasonable for them to pursue or defend a claim. So, I don't find this to be unreasonable – provided Watford have applied this term fairly.

While it's not this Service's role to determine who is liable for a collision - that's a matter for a court to decide - what I can do is decide whether I think Watford investigated Mr G's claim fairly and reached a reasonable outcome based on the available evidence.

I can see Watford received notification from the third-party alleging Mr G's involvement in an accident in early October 2023. Watford contacted Mr G on the same day to take a report of the claim and confirm his involvement. Mr G's daughter then completed a statement with a diagram of the accident circumstances. The statement said she was in the middle of three lanes. The middle and right lanes turned right onto a major road, and the left lane went straight on. Mr G's daughter's statement said the third-party driver cut across her from the left-hand lane which caused them to collide. And photos taken of the accident show the third-party vehicle in front of Mr G's car as it was turned across the path.

Watford contacted Mr G to let him know they would be conceding liability as they said they had received a statement from a witness that said they did not know either party and said Mr G's car was actually in the farthest right hand lane and the third-party was in the middle lane, and that Mr G's daughter had proceeded straight instead of turning right, and collided with the side of the third-party's car.

I can see Watford reviewed the photos of the accident and considered statements. They did note some concerns around the third-party witness statement – which they said appeared as though it had been made by somebody known to the other driver. And while I acknowledge Watford said they carried out social media research which concluded the driver and third-party witness weren't known to each other; it has been highlighted that this was prior to Watford speaking to the witness by phone, in which it was noted there were concerns about the witness' statement. Watford noted the witness couldn't explain the accident circumstances, but he seemed to want Mr G's daughter to be at fault.

There were then several file notes that followed through December 2023 which noted that the claim handler felt a 50/50 liability split should be pursued. But it appears Watford then altered their position on this approach following difficulty in obtaining further information from Mr G's daughter about the departure location on the night of the accident.

I note Watford's concerns over their view that they found Mr G's daughter to be difficult to contact and that she appeared to be evasive. Watford concluded that they wouldn't be able to rely on Mr G's daughter's testimony if they had to proceed to court - they said:

"...in a statement of truth we need to have a starting point for the journey and not just a general location which the driver was made fully aware of. Unfortunately, the driver was unreliable throughout the claim and not someone that could have been relied upon if the matter ran to court."

Watford explained that as this wasn't received, they would need to settle on best possible terms. Watford then confirmed this to be their proposed course of action to Mr G in early January 2024 and they went ahead and dealt with the third-party claim on a without prejudice basis.

Having thought about the liability decision very carefully, I think there were elements Watford could have pushed back on more. And I think they may have been able to propose a 50/50 settlement early on in the claims process without having to be overly concerned with court action – which is usually a last resort. However, having said that, as part of my review of this complaint, I need to consider the wider circumstances of the complaint, in line with DISP 3.6.4. which requires me to make a decision on what I consider to be fair and reasonable in all the circumstances of the case.

Ultimately, at the time that Watford were attempting to deal with the third-party claim, Mr G did not have the benefit of cover under his policy. And this means he would be responsible for any costs incurred as part of the claim. And while I do think Watford should have been a lot more forthcoming with Mr G and explained the process in a clearer way – I'm not persuaded that Watford acted in an overly unfair way here by concluding the claim when they did.

Watford explained that given their concerns with Mr G's daughter's ability to dispute liability, and because the third-party was dealing directly with them for the damage to her vehicle – they took a decision to conclude that claim on a without prejudice basis early to avoid potential future claims, and therefore increased costs. And as Watford is entitled to make a commercial decision – I think they were justified in this particular complaint in trying to resolve things early – and they acted in the same way any other insurer would have done in similar circumstances.

So, while I think Watford could have raised a 50/50 liability offer instead of agreeing to settle the third-party claim on a without prejudice basis, I don't think that this was an unreasonable decision for them to take – when factoring in that Mr G was ultimately going to have to pay for any costs incurred.

I do recognise that making a determination after the event is a difficult endeavour and that nobody can know for sure what the outcome of this claim would have been. But while I acknowledge Mr G may have been caused a loss of opportunity by Watford not pushing for a 50/50 split, or even a full non-fault decision – I'm not persuaded he would have likely taken this option if he had been told that he could become liable for even more costs if the third-party had chosen to dispute things further, or if Watford tried to make further attempts to settle the claim on that basis.

However, while I think their actions were ultimately reasonable, I think Watford should have been more transparent with Mr G and provided a lot more information to

him at the point they agreed to deal with the third-party claim. So I think they should pay a sum of compensation to account for this as I recognise Mr G would have been left without the benefit of full advice on how to proceed.

What was the impact

I recognise that Watford's actions would have caused additional distress and inconvenience to Mr G, over and above the already stressful situation he was experiencing. I haven't detailed everything here, but in particular I acknowledge Mr G's concerns over the accident possibly being staged and I think Watford could have been clearer in explaining why they were dealing with the claim in the way they did – outlining that Mr G would be responsible for any costs incurred if they pushed the claim further along.

I've therefore weighed up Mr G's testimony, the available evidence, and the duration of the incident. And overall, I've reached the same conclusion as the Investigator; I find that a sum of £450 compensation is fair and reasonable and in line with what I would direct in a similar complaint – and I'm satisfied awarding this sum in this particular complaint produces a fair and reasonable outcome."

I concluded that I was intending to uphold the complaint in part. I said I would require Watford to remove the policy cancellation record from external databases, reduce the amount they were seeking to recover from Mr G by the amount of premium refund that would have been due at the point of cancellation, and to pay £450 compensation. I invited both parties to respond to my provisional findings.

Watford responded to my provisional findings and said they had agreed to settle the third-party's vehicle damage claim when they did in part due to concerns over ongoing hire costs increasing. And they had also refused to deal with their personal injury claim. They maintained that they had settled the claim on a without prejudice basis due to issues obtaining all the information they needed and ultimately settled on best possible terms to avoid further costs.

Mr G also responded to my provisional findings but didn't agree. He said insurance exists to protect individuals from precisely these kinds of situations and yet he was facing a grave injustice by being asked to cover the third-party's claim costs. He outlined what he felt were systemic failures that had left him without protection or recourse. He said the ghost-brokered policy had been taken out in good faith and he was left with the consequences.

Mr G also said he felt Watford were more interested in protecting their own bottom line rather than conducting a fair and proper investigation of the accident circumstances. He said Watford made their decisions and only then communicated them to him, which was both unfair and unreasonable. Mr G concluded that he wanted me to reconsider the liability decision reached and that a 50/50 settlement, the removal of policy cancellation from his records, the refund of premiums already paid together with the compensation offered would be a far more equitable outcome.

As both parties have now considered and responded to my provisional findings, I'll set out my final decision below.

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've taken into account the further comments made by Mr G. However, they've not changed my thoughts about the outcome of this complaint for the reasons I'll go on to explain.

I remain sympathetic of the situation Mr G found himself in through no fault of his own. I've carefully considered his comments and thought about his wider concerns over the ghost-brokered policy as well as the wider insurance market and the protections Mr G feels should be in place to stop him falling prey to fraud and financial losses.

However, my role is to resolve individual disputes. And when considering what's fair and reasonable and coming to what I consider is a just outcome; I can only make a finding on what Watford did in the circumstances of this particular complaint and not whether the police, or London's transport and traffic agencies' service fell short.

I appreciate Mr G has asked me to make a finding on the liability aspect of this claim – but, as I explained previously, it's not this Service's role to determine who is liable for a collision - that's a matter for a court to decide. What I am required to do is decide whether I think Watford can justify the actions they took and whether they reached a reasonable outcome based on the available evidence.

Watford did originally consider the possibility of proposing a 50/50 liability split based on their review of the evidence. I consider this to be fair and reasonable and what I would expect an insurer in a similar situation to do. But Watford then altered their position on this approach, in part, due to difficulty in obtaining further information from Mr G's daughter about the departure location on the night of the accident.

This, coupled with their concerns over rising costs of pursuing the claim, meant they ultimately settled the third-party's vehicle damage costs on a without prejudice basis. Watford has said this was done in part to end ongoing hire the third-party was incurring, as well as to prevent any further costs. I don't consider this to be an unreasonable position for Watford to have taken.

And considering Mr G's concerns over his ability to pay for the claim as it currently stands, I have to think about what might have happened if Watford had disputed this claim further; and incurred even more expense. Court proceedings can be long and costly, and there is no guarantee of success. Had Watford proceeded to dispute the claim further, they may have caused substantially higher costs to be incurred. But as they didn't, and chose instead to make a commercial decision, I'm not persuaded this was unfair.

But, as I previously outlined, I do think Watford's actions caused distress and inconvenience to Mr G. He's outlined that Watford didn't involve him in all of their decision making during the claim process. And while I don't think this would have made a material difference to what ultimately happened – I do recognise that their actions meant Mr G was left without the benefit of full advice on how to proceed. And that is why I think they should pay a sum of compensation to recognise this.

I remain of the view that this complaint should be dealt with in the way I previously outlined. I know this decision will be disappointing for Mr G, but I hope I've provided him with a thorough explanation of why I've reached the decision I have.

My final decision

For the reasons I've given above, my final decision is that I uphold this complaint in part. I direct Watford Insurance Company Europe Limited to:

- Remove the policy cancellation record from external databases;

- Reduce the amount they are seeking to recover from Mr G by the premium refund that would have been due at the point of cancellation; and
- Pay £450 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 May 2025.

Stephen Howard

Ombudsman