

The complaint

Mr T and Mrs T complain about how U K Insurance Limited (UKI) dealt with a claim under their motor insurance policy following a collision with a third party vehicle, deeming it to be a fault claim.

References to UKI in this decision include their agents.

What happened

In July 2024 Mr T and Mrs T were involved in an accident, in which they were preparing to leave the driveway of their property and were in collision with an oncoming vehicle, damaging the front passenger side of their vehicle. They contacted UKI to tell them about the incident, saying the road outside their property was narrow lane with many blind spots and they had checked to their right when exiting their driveway but hit by the third party vehicle before they could check left. A neighbour took photographs, which Mr T and Mrs T said showed they were still on their driveway when the collision occurred, and they were stationary at the point of impact. Whereas they thought the third party vehicle was travelling at speed along the lane.

Mr T and Mrs T subsequently had their vehicle inspected at a local garage, who concluded the severity of the impact and damage, considering the age and high mileage of the vehicle, meant it would be uneconomic to repair. In their opinion, the garage said the severity of the damage indicated the third party vehicle was travelling in excess of 30mph at the time of the collision, considering the heavy build of Mr T and Mrs T's vehicle.

UKI considered the circumstances of the accident and concluded Mr T and Mrs T were at fault for the incident and would record it as a fault liability claim. As a result they would look to settle any claims made by the third party. As Mr T and Mrs T's policy was Third Party, Fire and Theft, they wouldn't cover the damage to Mr T and Mrs T's vehicle. Mr T and Mrs T's No Claims Discount (NCD) would also be affected at renewal of the policy. UKI said the incident occurred when Mr T and Mrs T were emerging from their driveway into the lane and collided with the third party vehicle. While Mr T and Mrs T said the third party vehicle was speeding, that couldn't be proven so wasn't a factor UKI would consider. And under the Highway Code, the onus was on Mr T and Mrs T as the emerging party to give way to traffic on the lane and ensure it was safe and clear before emerging. The third party had the right of way.

Mr T and Mrs T were unhappy at UKI's decision on liability, maintaining they weren't at fault for the accident. They said they were still on their driveway at the point of the collision and the third party vehicle encroached on their driveway. And the vehicle was travelling too fast given the narrow lane. They also said the third party had told them this was their third accident, which they said UKI should consider. They were also unhappy that being held at fault for the collision had led to a significant increase in their insurance premium. So, they complained to UKI.

In their final response UKI didn't uphold the complaint. They acknowledged what Mr T and Mrs T had said about the circumstances of the accident and a statement from a neighbour supporting their case. But UKI said this wasn't enough to prove the third party was liable for

the accident. Images provided by Mr T and Mrs T only showed the two stationary vehicles (after the collision) and the neighbour similarly hadn't witnessed the collision, so wouldn't be taken into consideration. Nor could it be proven the third party vehicle was speeding.

UKI referred again to the provisions of the Highway Code which placed the onus on Mr T and Mrs T as the emerging vehicle to give way to traffic on the lane and to ensure it was safe to emerge. And Mr T and Mrs T had said there was a blind spot when emerging from their driveway, which UKI said put the onus on them to take extra care and attention when emerging from their driveway, assuming a third party vehicle could be approaching the blind spot. The third party vehicle had the right of way as they were proceeding along the lane. There was insufficient evidence to show the third party was liable for the accident. UKI also referred to the policy terms and conditions which meant they were entitled to take over and carry out the negotiation, defence or settlement of any claim in Mr T and Mrs T's name.

Mr T and Mrs T then complained to this Service, unhappy at UKI deeming the claim to be a fault claim, which would impact the future cost of their insurance (or whether they would be offered insurance). They wanted UKI to accept they weren't to blame for the accident.

Our investigator didn't uphold the complaint, concluding UKI didn't need to take any action. The investigator noted the policy provided for UKI to settle the claim, including determining liability. Looking at what UKI had said [in their final response] about coming to their decision to deem Mr T and Mrs T liable for the accident, the investigator thought UKI's stance was fair and reasonable. In the absence of any dashcam, CCTV footage or independent witness statement, UKI had to go on the evidence available about the circumstances of the accident, including the images provided by Mr T and Mrs T.

Mr T and Mrs T responded to maintain they had moved forward but were still on their driveway at the point of the collision. And the position of their driveway relative to the lane was important in understanding the circumstances of the accident (Mr T and Mrs T provided photographs of their driveway and the lane, and separately UKI provided images of Mr T and Mrs T's vehicle and the third party vehicle which they had considered). The third party said they were travelling at 30mph, which the impact [damage] to their vehicle proved, and would not have had time to stop, given the speed and the fact they wouldn't have seen Mr T and Mrs T's vehicle on their driveway given the blind spot.

Our investigator considered the points and additional evidence, but maintained their view UKI had acted fairly and reasonably.

Mr T and Mrs T maintained their disagreement with the investigator's view and asked that an Ombudsman consider the complaint.

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 UKI have acted fairly towards Mr T and Mrs T. The key issue in Mr T and Mrs T's complaint is whether UKI acted fairly and reasonably in holding them liable for the accident. Mr T and Mrs T maintain they were still on their driveway at the point of the collision and that the third party vehicle was travelling too fast, given the position of their driveway and the lane and the blind spot. UKI say the onus is on Mr T and Mrs T as they were emerging from their driveway onto the lane.

I'd first want to say I recognise what Mr T and Mrs T have told us (and UKI) about the circumstances of the accident and that they weren't at fault for the accident. I don't doubt the

strength of their feeling on this issue. 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 UKI acted fairly in the circumstances of – and following - the incident.

The policy terms, as they do in motor insurance policies more generally, provide for UKI to assess claims and determine liability. Under a heading *Other conditions you need to know about* and a sub-heading *When we can act on your behalf* it states:

“We're entitled to do either of the following:

- *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...”*

Looking at the evidence available about UKI's handling of the incident, it does indicate their consideration of the circumstances of the accident, including Mr T and Mrs T's version of what happened with the accident. That includes the images provided by Mr T and Mrs T and their views on the location of their driveway relative to the [narrow] lane at the end of their driveway. And while Mr T and Mrs T have provided the views of a neighbour and a local garage, there is no independent witness evidence about the accident when it happened or dashcam or CCTV footage showing the accident as it happened.

In the circumstances, I don't think it was unreasonable for UKI – as they set out in their decision to hold Mr T and Mrs T liable for the accident and their subsequent final response – to refer to the provisions of the Highway Code that place the onus on the emerging party to ensure the road (the lane) was clear and safe for them to emerge. And while Mr T and Mrs T maintain the third party vehicle was speeding and hit them while they were still on their driveway, there isn't any independent evidence to prove this was the case. The absence of such independent evidence would also make it likely that UKI could not prove third party liability should the matter proceed to court (for a definitive determination of liability).

Given the description of the circumstances of the accident provided to UKI by Mr T and Mrs T, then I'm not persuaded – as Mr T and Mrs T requested – that UKI visiting the scene of the accident would have been likely to change UKI's view of what happened and their decision to hold Mr T and Mrs T liable for the accident.

Taking all these points into account, I can't conclude UKI have acted unfairly and unreasonably, so I won't be asking them to take any further action.

My final decision

For the reasons set out above, it's my final decision not to uphold Mr T and Mrs T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 30 June 2025.

Paul King
Ombudsman