

## **The complaint**

Miss L complains about First Central Underwriting Limited's ("FCUL") liability decision following a claim against her car insurance policy.

Miss L's complaint has been brought by a representative – who I'll refer to as Mrs L.

## **What happened**

Miss L says, as she was pulling out from a junction, there were no other vehicles travelling from the left or right. She says she was travelling under 5mph during the manoeuvre and then noticed a car approaching from the left at high speed. Miss L says the third-party driver was travelling very quickly towards her so they couldn't stop and then swerved and hit a lamppost. Miss L says she reported the incident to FCUL who informed her that, because her car wasn't involved, this wasn't a claim.

Miss L says, around three weeks later, FCUL informed her a claim had been made by the third party. Miss L says she logged into her portal account and noticed there was a fault claim showing against her policy. Miss L then continued to correspond with FCUL about the liability decision and raised a complaint about this as well as them not responding to her emails and misinformation she was given.

FCUL responded and explained they wouldn't be asking for a review of the liability stance as it had been reviewed by several members of the appropriate department and their decision remained that Miss L would be at fault for the incident. FCUL acknowledged there had been errors though, and apologised for the misinformation given about the claim, not responding to communication from Miss L and other customer service issues. They also confirmed they would be sending a cheque for £200 compensation to Miss L.

Our investigator looked into things for Miss L. He thought FCUL hadn't acted unfairly in relation to their liability decision and the £200 compensation offered for the customer service issues was fair. Miss L disagreed so the matter has come to me for a decision.

## **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've decided not to uphold the complaint. I understand Miss L will be disappointed by this but I'll explain why I have made this decision.

My role requires me to say how a complaint should be settled quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute. The key dispute here relates to FCUL's decision on liability and to hold Miss L responsible for the incident.

When an accident occurs, it's the insurer who'll decide how the claim should be settled - this includes determining which party was at fault. An insurer might choose to accept liability,

propose or agree to split liability, or choose to defend any allegation of liability. While this decision rests with an insurer, and it's not the role of our service to decide who is at fault for an accident, we can look to see whether an insurer has handled the claim in a fair and reasonable manner. So, although the terms and conditions allow FCUL to decide liability in the claim made against Miss L, I've looked into how and why FCUL reached their decision and the evidence and arguments they considered before making a decision.

The information shows FCUL took into account Miss L's version of events, and also the third party's account of the incident. They say the main evidence they relied on though was the CCTV footage provided by both parties. I've viewed this evidence, and this shows Miss L pull out of a side road and turning right, intending to join the main road. The third-party's car then approaches from Miss L's left, and to avoid a collision the third-party swerves left and hits a lamppost. FCUL say, *"It is deemed that even though no contact was made, [Miss L's] action was the proximate cause of the third party vehicle impacting the lamppost."*

The information shows FCUL also took into account further relevant factors and referred to the Highway Code, specifically, Rule 170 which says, *"Take extra care at junctions. You should...look all around before emerging. Do not cross or join a road until there is a gap large enough for you to do so safely."*, Rule 171 which says, *"You must stop behind the line at a junction...Wait for a safe gap in the traffic before you move off"*, and Rule 172 which says, *"You must give way to traffic on the main road when emerging from a junction..."*

Taking this all into account, and given what the CCTV footage shows, I don't think it's unreasonable for FCUL to have applied these rules to the circumstances here. I acknowledge Miss L maintains the third-party was travelling very fast and above the speed limit. I can see Mrs L says Miss L didn't pull out in front of an oncoming vehicle, and the third-party car was over 200 feet away, on a road with a speed limit of 20mph, so this gave Miss L more than enough time to pull out safely. Mrs L says the third party was travelling at over 50mph and engaging the brake continuously over a distance of 91 feet – which is the distance shown in the CCTV. Mrs L says this means the third party would've been travelling much faster in the time before their car appeared in the CCTV footage.

I can see FCUL have considered this, but they don't believe this provides a defence. They say, when emerging from a minor road, the counter argument would be, if Miss L realised the third-party was approaching at speed, then she should've realised it wasn't safe to perform her manoeuvre. FCUL say, that particular road is long and straight and, once past any parked vehicles, visibility would be very good for any vehicles coming from the left. The information shows FCUL did also consider the speed factor, more specifically, and found this would likely be within tolerance levels and, in any event, any allegation around this wouldn't be persuasive as there were too many variables such as the accuracy of the distance measurement and the speed of the CCTV footage could be marginally faster or slower. So, I'm satisfied FCUL have taken Miss L's concerns about the speed into consideration, and I can't say their findings are unreasonable in the circumstances.

Mrs L says the third party, who was also insured by FCUL, had their own claim declined based on the usage of their car at the time of the incident, but they were then able to claim on their legal cover. I also acknowledge Mrs L has raised points about Miss L not being given an opportunity to use her own legal cover.

I'm only looking at FCUL's actions in handling the claim on behalf of Miss L and in line with her car insurance policy. FCUL's role here was to consider the evidence and decide whether to accept liability or whether there was a reasonable defence to the claim. And, for the reasons I've mentioned, I think they've acted fairly. I can see Miss L's policy did include legal expenses cover, but this section of the policy isn't underwritten by FCUL. So, while I acknowledge Mrs L's point about Miss L not being given an opportunity to use her legal

expenses cover, I haven't seen any evidence at this stage that the legal expenses insurer would've agreed to pursue a defence to the claim or that it would've been successful.

I acknowledge Mrs L says the original decision to accept liability was based on the third-party's limited CCTV footage, as opposed to FCUL considering the more complete version provided by Miss L. But, it's clear from the information I've seen that FCUL have considered all the evidence which I would consider relevant here and, as mentioned above, this includes testimony from both parties, both sets of CCTV footage and the relevant and applicable Highway Code Rules. I also acknowledge Mrs L's point that FCUL weren't aware of the speed limit on the road at the point they made a liability decision. But the information shows FCUL did then take this into account, and they maintained their stance on liability.

I can see Miss L has also complained about a number of customer service issues. There doesn't appear to be any dispute over this as FCUL accept there were errors. I do acknowledge it was frustrating for Miss L to not receive responses to her communication and there was frustration caused as a result of FCUL not explaining the liability position to Miss L in a timely manner which then prevented Miss L from considering her options at the time. Taking into account the errors, the impact of those errors and the duration of the impact, I think the £200 offered by FCUL is fair and reasonable in the circumstances.

I do acknowledge Miss L's frustration with FCUL's liability decision, and I can see she has strong feelings about who's responsible for the incident. But, my role here is to decide whether FCUL have acted fairly and reasonably when reaching a decision on liability – and for the reasons I've mentioned, I think they have. I wish to reassure Miss L and Mrs L I've read and considered everything they've sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

### **My final decision**

For the reasons I have given, it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 13 June 2025.

Paviter Dhaddy  
**Ombudsman**