

DRN-5771099



The complaint

Mr H has complained that Highway Insurance Company Limited trading as LV= Highway unfairly decided Mr H was at fault for causing an accident under his motor policy.

What happened

Mr H was involved in an accident on 26 January 2024 with another driver. Mr H was intending to turn right. The sun was shining brightly and Mr H said he was dazzled by the reflection of the sun on the other car, which also meant the sun was shining directly at that other car driver too. He also said he had stopped but that other driver didn't stop and then drove into him.

Mr H said the accident occurred very near his home and since he had lived there for over 20 years, he was properly familiar with the area and the road layout plus the fact that cars and campervans are often parked on the road to look at the view. The police were called, and Mr H was very relieved neither he nor the other driver were hurt. He said the police agreed the sun was very bright at the time and facing the other driver too. He said the other driver accused him of being at fault and initially he thought he may have been also. But he said that with further consideration and because he was stopped before the accident happened, he didn't think he was at fault for causing this accident.

Mr H said he reported the accident to his broker. However, Highway said the accident was reported to it by the other driver and not Mr H or his broker. Mr H said no one examined the accident damage on his car to compare with the accident damage on the other driver's car, despite the fact that he retained his car for some time in order to facilitate this, accruing £1,464 of storage charges.

Mr H is of the view his thoughts on how the accident occurred and that the other driver also must have been dazzled by the sun shining directly into her eyes, wasn't taken into account by Highway. He feels the other driver had enough distance to stop just as he had, but she didn't stop and so the accident occurred. This had to be because she was dazzled by the sun in his opinion. He was told the claims handler was working from home and he felt she came to her decision on liability without due consideration of all the facts of the matter. He felt very poorly supported by Highway, most especially as he has hearing difficulties so can't speak on the phone.

So, as he felt Highway's decision that he was at fault was unfair and unreasonable he brought his complaint to us.

Highway didn't provide any final response letter to Mr H's complaint, but it did agree that we could investigate his complaint. The investigator was of the view that since the policy terms allow Highway to decide liability for accidents as they think fit, it hadn't done anything wrong.

Mr H remained very unhappy, so his complaint was passed to me to decide.

I issued a provisional decision on 8 August 2025, and I said the following:

'Having done so I'm intending to uphold this complaint. I'll now explain why.

It is not for this service to decide who is liable for causing an accident. That remains for the courts to do. My role is to examine whether Highway came to its decision on liability fairly and reasonably and I don't think it did here.

In virtually every motor policy, there is a clause which permits the insurer to decide the responsibility for causing an accident. There are cogent reasons for this as motor insurers are dealing with motor accidents on a daily basis on behalf of their policyholders. It is their money funding the indemnity to the policyholder and any investigations or indeed court proceedings as well and they are more aware of the

courts' thoughts on liability too. So, there is nothing inherently wrong with insurers doing this. And indeed, when we take out a motor policy, we also agree to this term. Highway's policy term concerning this says the following:

'We may do the following:

- Take over, defend or settle any claims in your name, or that of any other persons insured.*
- Take action (which we will pay for) in your name, or that of any other person insured, to get back any money we have paid.'*

So, in order to do this Highway must show that it made the appropriate investigations, which I consider to be looking at the damage to both cars to get a better idea of how the accident occurred, with the help of engineers. And to take full details from both drivers. Obtain any police report if available, which I understand could have been available here. And then come to a well-reasoned decision on whose fault the accident was.

The system notes Highway initially forwarded to us seem to concern another incident in which Mr H was involved in a carpark, which has no bearing on the circumstances of this accident. Its system notes for this accident don't show much interaction with Mr H or recounted what the damage to his car looked like either.

Mr H valiantly kept his car available for any inspection at a significant cost to him. His thoughts were that Highway would seek to inspect it to help determine how the accident occurred, and he also thought the other driver's insurers would want to look at it too if nothing else but to compare the damage. He also believed the police would want to look at it too. His correspondence continually mentioned the issue with the sun. He was dazzled by its reflection on the other driver's car, which had to have meant there was a large possibility the other driver was very dazzled by the sun shining in on her. He continually said his car was stopped as well. Also, his car sustained frontal damage not side on damage which would have been more likely if he was actually crossing the path of the oncoming other driver. But all this was ignored. Solely it seems on the basis that Mr H was intending to turn right, it was then decided that his car couldn't have been stopped, and he had to be at fault. With no examination of the damage to the cars or noting his car had head on damage, or indeed examination of the accident site too, I'm not sure how Highway fairly came to this decision either.

So, I agree with Mr H's thoughts that he was not supported by Highway as I think he should have been. It also transpires that it was a shock for Mr H to realise his broker had sold him a Third Party Fire and Theft policy instead of a Comprehensive policy. Obviously, that's got nothing to do with Highway as his policy was sold by a broker. But just because his policy wasn't comprehensive doesn't mean less care should be put into ensuring the liability of this accident wasn't fairly and reasonably considered. Therefore, I don't consider Highway's stance on finding him solely liable for the accident was reasonable given all these circumstances. I think a more reasonable outcome given the car damage facts, would have been to dispute liability holding the other driver at fault.

Given his hearing issues Mr H can't talk on the phone. Sadly, his tablet had broken down, so email was also difficult. He was told the claims handler was working from home so couldn't accommodate other means of communication. However, under the overarching Consumer Duty, Highway are obligated to show they have provided adequate consumer support. I can't see that happened here for Mr H. Surely an

investigator could have come out to talk to him in these circumstances, more so as the accident site was so close to his home. The other driver's account appears to have been swiftly accepted without listening to what Mr H had to say about the sun. And it doesn't seem any consideration was given to the fact he said his car was stopped at the time of impact. And the fact his car sustained frontal damage wasn't considered either. And instead, the case was closed with the other driver's claim being paid on a without prejudice basis.

This also means that Mr H now has a fault claim on his insurance record which will affect the premium price of his motor policy going forward. He is also out of pocket for storing a car for inspection which was never inspected. His complaint was never registered properly and neither did Highway consequently provide him with a final response letter concerning his complaint about this lack of service either. This is further evidence of the bar set by the overarching requirement of the Consumer Duty not being met by Highway for Mr H here.

I don't consider this is fair and reasonable. I think if Mr H's evidence and testimony is to be accepted, namely that his car was stopped, the damage to both vehicles being head on damage and that it's highly likely the other driver was blinded by the sun, Highway should have possibly come to another decision on who was liable for causing this accident.

So, I think Highway should record this accident as non-fault on Mr H's insurance record and allow his No Claims Discount (NCD).

I also consider that Highway should reimburse Mr H some of his storage charges of £1,464. I consider Mr H rightly preserved his car to help with the accident circumstances for both Highway and the other drivers insurers. Neither of them bothered to seek to examine it. Therefore, I consider Highway should pay Mr H the sum of £500 towards these storage charges with interest. Mr H paid the sum of £1,464 on 11 March 2024.

As Mr H was not comprehensively insured, Highway had no responsibility to repair Mr H's car or indeed provide Mr H with the market value. It would be for Mr H to claim from the other driver's insurers as effectively given he only had Third Party Fire and Theft cover, the damage and subsequent disposal of Mr H's car is an uninsured loss. Mr H's persistent efforts to explain how this accident happened and the lack of acknowledgement by Highway that he had a complaint that required answering is unreasonable. Added to that I don't consider Highway was aware of its duties to Mr H under the Consumer Duty either. Taking all this into account, I consider that Highway has unnecessarily caused Mr H an excessive level of upset, distress, and frustration. He should have been listened to by Highway, and it should have been noted that his car suffered no side on damage which would have indicated he was not turning across the path of the other driver's car. All that would have made the fact that he had stopped his car due to the dazzle of the sun's reflection off the other driver's car far more plausible. So, I consider Highway should pay Mr H the sum of £400 compensation here. This is in line with our approach to compensation which is more fully detailed on our website.'

Mr H was thankful for my provisional decision. Unsurprisingly Highway didn't agree.

Highway said there were only three calls made on the file. One from Mr H's wife the named driver to validate the claim. Another was from Highway to Mr H's broker. And a third one back to Mr H's wife the named driver. It said this shows there was no issue in dealing with the matter given the case handler was working from home.

Highway also didn't agree that it should record the claim as non-fault. It felt it would never achieve a 100% in view of the circumstances of how the accident occurred. It maintained Mr H was in the act of turning right. It said there was no evidence of the other driver's windscreen being misted over or the sun was in their eyes. So, it decided it was still only for Mr H to stop not the other driver. The most it would be prepared to do is offer to record it on a 50/50 basis which would still affect Mr H's insurance record and his NCD.

It didn't see why it had to pay towards Mr H's costs of storing his car for Highway for the other driver's insurers or indeed the police to look at to compare any damage. Mr H didn't have comprehensive cover so it would never get involved with the customer's damage in those circumstances.

Lastly, it agreed the £400 compensation.

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 again, I remain of the view as expressed in my provisional decision. I consider this complaint should be consequently upheld with the recompense as I detailed in that provisional decision.

I appreciate from Highway's point of view, it possibly feels quite harsh. But it never permitted Mr H to explain his side of the story verbally given he can't use the phone due to his hearing difficulties. This meant Mr H was never afforded an actual conversation with anyone over this accident so he could explain things better during that conversation and correct misapprehensions, which would be the normal course of events in such a dispute over liability. That would have helped Highway to take into account Mr H's own testimony, an opportunity every policyholder should have.

Invariably any policyholder would have at least a conversation with a file handler when they were disputing such things as to whether they had started to turn right or had not yet done so, and why the sun would have had to have dazzled the other driver. There was never any mention of windows being misted, there was only mention of the fact the sun was shining hard on the other driver, so much so, that the reflection of the sun on her vehicle then dazzled Mr H into stopping the car before starting to turn right. It follows, that as the other driver was driving into the sun, it's imminently possible she was blinded by it and couldn't see anything at all, which is why she didn't stop, when she had the space to do so according to Mr H and instead ran straight into the front of Mr H's stopped car, head on. She didn't run into the side of his car so the evidence that he was turning right isn't there. As the police responded, there remained the possibility of some clarification of this aspect and indeed the position of the cars on the road from any police report too. But Highway never bothered to ask for any police report.

The overwhelming view of Highway is coloured by the fact it believes Mr H had *started* the turn to the right, but his testimony is very clear that he hadn't actually started to turn right at all. Certainly, he was intending to turn right but that manoeuvre according to Mr H, hadn't yet started before the other driver then crashed into his stopped car. There were parked cars, so the other driver was driving in the centre of the road (because of the parked cars) which also might have had a bearing. Both cars had frontal damage and certainly there wasn't enough side on damage to show that Mr H had started to turn right.

Therefore, I remain of the view it's not actually as clear cut as Highway believes this case would be decided 50/50 or totally against Mr H either. Consequently, I remain of the view that Highway didn't investigate this accident properly in order to come to a reasonable view on liability here.

If Mr H had been able to have the benefit of some conversation with someone, he also might have scrapped his car much earlier. He was keeping it in order that someone could examine the damage to his car to help with ascertaining liability for the accident. So, the reason I'm asking Highway to refund a small proportion of his storage costs has got nothing to do with Highway being responsible for any car damage issues, it's to do with the fact that its communication with Mr H was lacking, which in turn meant Mr H wasn't availed of a proper opportunity to mitigate his loss appropriately.

Highway has agreed the further compensation issues remain pertinent for the reasons I detailed in my provisional decision.

My final decision

So, in the very particular circumstances of this case and for these reasons, it's my final decision that I intend to uphold this complaint.

I now require Highway Insurance Company Limited trading as LV= Highway to do the following:

- Record the claim as a non-fault claim and allow Mr H's NCD.
- Pay Mr H the sum of £500 towards his car storage costs adding interest of 8% simple interest from the date Mr H paid these storage charges on 11 March 2024 to the date it pays him.
- Pay Mr H the sum of £400 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 September 2025.

Rona Doyle
Ombudsman