DRN-5776348

The complaint

Mrs S has complained about the way her motor insurer, One Insurance Limited ('One Insurance') dealt with a claim she made on her policy.

What happened

I issued a provisional decision regarding this complaint earlier this month where I said I was considering upholding it in part. An extract from that decision follows:

"Mrs S was involved in an accident in December 2022 when she says her car was hit by a coach which veered onto her lane. Mrs S said the coach scraped the side of her car from the bumper to the front wing breaking the wing mirror. She said her and the driver pulled over to a layby and he apologised and said he hadn't seen her.

Mrs S said she was later contacted by the coach's insurers who offered to repair her car. But she informed them that she had reported the matter to her insurer and to contact One Insurance. She was later informed that the third party was no longer prepared to admit liability.

Mrs S wasn't happy with One Insurance's handling of her claim overall and raised several complaints with it over the months that followed the accident. Mrs S was mainly unhappy regarding delays in her car being repaired as well as the fact that One Insurance agreed to settle liability with the other side on a 50-50 basis. Mrs S didn't think she was at fault for the accident as it was the coach that collided with her.

One Insurance issued responses to Mrs S's complaints in May, July and August 2023, and also in February and May 2024. In relation to the delays in the car being repaired which didn't start until September 2023, One Insurance said this was because Mrs S didn't wish for repairs to start before the other side admitted liability. With regards to liability, it said as there was no CCTV footage or independent witness evidence, it didn't think this was a case it could successfully pursue in court. And that a 50-50 split was a fair outcome in the circumstances. One Insurance added that the other side said the accident happened on a bend and that Mrs S should have allowed more space for the coach, which was a larger vehicle, under the highway code. It offered Mrs S £30 compensation in May 2023 for not keeping her updated. In July and August 2023 it offered Mrs S a further £130 compensation due to delays in finding a garage to carry out the repairs once Mrs S decided to proceed with those in June 2023. In February 2024 it offered Mrs S a further £300 compensation for delays for progressing the matter with the third-party insurer.

Mrs S didn't agree and said that the accident did not happen on a bend, she was ahead of the coach and the other side had already told her it was admitting liability. She was also *unhappy that it took nine months for her car to be repaired. Mrs S added that she had been charged 50% of her excess (£125) so effectively the £300 compensation she was being offered was £175.*

Mrs S brought her complaint to our organisation in November 2024. She said she wanted this to be recorded as a non-fault claim and she also wanted the rest of her excess back. She said she was greatly impacted by the claim and the delays and suffered a lot of stress for which she wanted to be compensated.

One Insurance didn't think we could consider Mrs S's complaint as she referred the matter to our service after the six-month time limit from the date of One Insurance's final response letters and was therefore outside our jurisdiction. It said its last response regarding liability was in February 2024 and its last response regarding the repairs was in July 2023, so both complaint points were out of time.

Before proceeding with her view our investigator informed Mrs S that we would only be able to consider Mrs S's complaint about the liability decision. Ultimately, our investigator didn't think that One Insurance acted unreasonably in settling the matter on a 50-50 basis. Our investigator also felt One Insurance's £300 offer was fair and reasonable.

Mrs S didn't agree. She said that One Insurance hadn't investigated the matter thoroughly. For example, it didn't look at the layout of the road to confirm that it was wide enough for both cars. She also said she didn't accept or receive the £300.

Our investigator didn't change her view and as there was no resolution the matter was passed to me to decide.

I issued a decision regarding our jurisdiction to consider Mrs S's complaints in July this year. In that decision I said that we could consider complaints issues which led to the 27 July 2023, 30 August 2023, 15 February 2024 and 9 May 2024 complaint response letters. I reached this decision because I didn't consider that all of One Insurance's responses were "valid" final response letters under the Dispute Resolution Rules (DISP) so as to start the six-month time limit. I also thought that the August 2023 response which wasn't a "valid" response effectively withdrew the July 2023 response (which was itself a "valid" response) as it substantially increased the compensation originally awarded. So I thought we had jurisdiction to consider Mrs S's complaints regarding the liability decision and any post 12 May 2023 delays in the car being repaired.

As I thought this was a complaint we could consider in part, I am now proceeding to look into the merits of Mrs S's complaints.

What I've provisionally 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.

<u>Repair delays post 12 May 2023</u>

As I said above, in this decision I am only considering delays which took place after 12 May

2023.

Mrs S initially said that she didn't want the repairs to start until liability was admitted by the other side. But she became unhappy with how the matter was progressing and eventually decided to proceed with her repairs in June 2023. One Insurance instructed a garage in July 2023 so I can't see that it caused any delays in that respect. Nevertheless, the garage cancelled the instruction seemingly without letting One Insurance know. This caused a 15-day delay that I think One Insurance should bear some responsibility for, bearing in mind this was caused by one of its agents.

Mrs S was also unhappy that the garage instructed was 30 miles away from her but One Insurance said it wasn't able to find any closer to her. I appreciate Mrs S said that there are a lot of garages close to her house, but they may not be on One Insurance's list of approved repairers. So, though I appreciate this was frustrating, I don't think One Insurance had many options unless Mrs S wanted to use her own garage which I don't think was the case.

A repair estimate was provided on 11 August 2023 so I think there was a delay at that point bearing in mind the garage was booked in July 2023. Mrs S authorised the repairs on 22 August 2023- the same day One Insurance informed her about the estimates. Mrs S said she was then told she had chosen to use her own garage, which wasn't true, and that the repairs would cost her £2,423.50. She has provided extracts from the online chat in support. I think other than confusing, this would have also been frustrating for Mrs S. Nevertheless, I think this was a misunderstanding which seemed to have been cleared shortly thereafter.

The repairs were arranged for September 2023 and were completed in October 2023. Again, I think there was an overall delay bearing in mind Mrs S asked One Insurance to proceed with the repairs in June 2023.

In July 2023 One Insurance said there were some initial delays in arranging the repairs and these were due to external factors such as the location of available repairers and also the lack of availability of parts due to Covid-19 and other events that impacted the motor industry which were outside its control. I appreciate that some of the delays were outside its control but, as I said above, there were also delays that could have been avoided.

<u>Compensation offered by One Insurance</u>

One Insurance offered Mrs S £130 for the repair delays. Overall, bearing in mind that the repairs themselves weren't delayed (they started in September 2023 and were completed by October 2023) and that Mrs S was using her car in the meantime; though I appreciate this was inconvenient; I think the compensation One Insurance offered was fair and reasonable. I've also borne in mind that One Insurance later offered Mrs S a further £300 for delays in settling liability so overall I think the compensation it offered for delays was fair and reasonable.

<u>Liability decision</u>

Under the policy, One Insurance will handle, defend and settle any claim subject to the cover provided by the policy. It isn't unusual for a motor insurer to take over and settle a claim on its insured's behalf, even where the insured doesn't agree with it being settled. We don't *think this is unfair or unreasonable if, for example, the insurer can show that this was the best possible outcome and that the settlement was reached to prevent costs from escalating. So, we need to be satisfied that the insurer was acting fairly and reasonably when it took this action.*

I should also explain that our role isn't to decide who was at fault for the accident but whether One Insurance acted fairly and reasonably in agreeing to settle liability on a 50-50 basis.

The parties provided differing versions of events. Mrs S doesn't agree with the other side that the accident happened on a bend and believes that the highway code provision quoted by the third-party insurer doesn't apply in the circumstances. She says the road is wide enough for both vehicles and that it was the coach that collided with her car, and that she was ahead of the coach at the time. One Insurance said early on in the process that without independent evidence such as CCTV footage or statements from independent witnesses, establishing liability against the other side would be difficult. I think this is fair and reasonable as this was a case where it was effectively one's word against the other's.

From what I've seen, One Insurance first got in touch with the other side in December 2022 to discuss liability and was asked to send over its own allegations first- which it followed up in writing. It chased the other side with a similar letter on 10 January 2023. It also wrote to the third-party insurer and said based on the information available, it considered its insured to be fully liable for the accident. So, I think One Insurance did initially try to get an admission from the other side.

The third-party insurer responded in January 2023 with its own allegations and asked for Mrs S's written statement, diagram, witness details or dash cam footage. One Insurance provided its response towards the end of February 2023 and a few days later the other side said it was firmly disputing liability and said Mrs S failed to leave enough space for their insured who was in a larger vehicle.

I appreciate Mrs S doesn't feel that One Insurance adequately investigated the accident and feels it didn't do enough to secure a liability admission from the other side. I can understand why Mrs S may feel this way, but at the same time I note that the only evidence One Insurance had was Mrs S's testimony of how the accident happened which was different to the third party's. I appreciate Mrs S feels that it didn't look at the location of the accident to establish where it happened etc but, again, though Mrs S maintains the accident didn't happen on a bend, the other side said it did. And without independent evidence, One Insurance felt this was difficult to prove. I think this is fair and reasonable.

In March 2023 Mrs S informed One Insurance that there was CCTV in the area. But by that point I think it would have been too late to retrieve it. I note that when One Insurance wrote to Mrs S in December 2022 acknowledging the claim, it also asked her to inform it if there was CCTV in the area and warned that most companies wipe this footage after 28 days. Despite the delay, One Insurance wrote to the other side in April 2023 and asked whether it had obtained any CCTV footage or witnesses or other evidence. It also tried to call the other side but the line was cutting off. The other side didn't say it had any other evidence but confirmed it wasn't claiming for any damage in May 2023. Overall, I think One Insurance's actions were reasonable in the circumstances and I see that it did try to find CCTV footage *once Mrs S made it aware that there was CCTV in the area.*

On 24 August 2023 One Insurance proposed a 50-50 split to the other side based on the lack of independent witnesses or CCTV footage. For the reasons I gave above, I thought this was fair and reasonable.

I appreciate Mrs S said that the coach driver and their insurer admitted liability when they spoke to her and offered to repair her car. I appreciate it was frustrating that they seemed to have retracted this admission later on. But from what I have seen, I don't think this was down to any of One Insurance's actions. Unfortunately, it is not uncommon for parties to change their liability stance later down the line; it's not rare to see instances where drivers admit liability at the scene but their insurers later dispute this; but as I said I think this was the insurer's decision and not something One Insurance caused.

Even though I agree with One Insurance's actions in relation to the 50-50 settlement, I think it would have been reasonable for it to have reached this agreement with the other side on a "without prejudice" basis bearing in mind it did not have Mrs S's instructions to admit liability. This would have enabled Mrs S to pursue her own claim against the other side if she wished, though this is something she would have had to fund privately. And though I don't think the decision to settle on a 50-50 basis was unreasonable, I think failing to do this on a "without prejudice" basis will have caused Mrs S some distress. She herself pointed out that the 50-50 offer was made without her instructions. I also note that she only became aware of this in February 2024 when she queried why One Insurance only recovered 50% of her excess. In the circumstances, I think One Insurance should pay Mrs S a further £250 compensation for the distress and inconvenience this caused her."

Both parties responded to my provisional decision. Mrs S said she did not agree with certain aspects of the decision but does not wish to keep the complaint open and has spent a considerable amount of time trying to get it resolved. She feels the compensation I have awarded does not reflect the amount of time she has spent on it and the stress it has caused her. She also said that One Insurance has still not paid any of the compensation it previously offered her.

One Insurance also did not agree and raised a number of points which I summarise below:

- It does not understand why it has to reimburse the remaining excess.
- In relation to making an offer to the other side, under the terms and conditions of the policy, it has the right to handle, defend and settle any claim subject to the cover provided by the policy.
- It does not agree that its actions diminished Mrs S's prospects of success as the fact remains that there is no evidence in support of her allegations.
- It does not agree that it cannot withdraw any liability admission and it has done so on a number of cases in the past. The admission did not have to be made on a without prejudice basis.

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'd like to start with Mrs S's comments. I appreciate she doesn't feel that the award I have made reflects the amount of time making this claim and complaint has taken and the stress she has suffered. As I explained in my provisional decision, ultimately I agree with One Insurance's decision to offer a 50-50 settlement. So, I think in that respect it handled the matter appropriately. I appreciate Mrs S didn't agree and made further complaints, but this didn't change One Insurance's decision, and I don't think there was anything more One Insurance needed to do in that respect.

One Insurance says it doesn't understand the rationale behind reimbursing the remaining excess. For clarification, in my provisional decision I did not ask it to pay the remaining excess. I asked it to make a compensation payment for the distress and inconvenience it caused Mrs S. This is different to paying back the excess.

In my provisional decision I noted that One Insurance can take over and settle a claim. And I said we think this is something it is entitled to do as long as it acts fairly and reasonably.

One Insurance does not believe it has prejudiced Mrs S in any way by openly admitting liability. It provided other examples of its own cases where it says it has been able to withdraw from a liability admission upon receipt of new information/arguments. In my provisional decision I said I thought it would have been reasonable for it to have made the 50-50 offer on a "without prejudice" basis. And, as far as I understand, this is common industry practice among insurers where they don't have their customer's instructions to admit liability. I appreciate that retracting an admission may also depend on when it was made and by whom. For example, a driver admitting liability at the scene would not carry as much weight as an insurer admitting liability to another insurer in open correspondence. One Insurance seems to suggest that in these particular circumstances it can unilaterally resile from the admission it made but the information it has provided suggests that if court proceedings haven't started like in this case, it might require the other side's consent. It hasn't explained what would happen if the other side did not consent.

In any event, as I said in my provisional decision, I thought the 50-50 settlement was reasonable in the specific circumstances. But I thought the decision to make this offer without informing Mrs S, will have caused her some distress and inconvenience. And as I pointed out in my provisional decision Mrs S didn't become aware of this until months later and only when she queried why she had only received 50% of her excess back. I think the fact that One Insurance didn't warn her or tell her about the settlement will have been very frustrating for her. Especially because she felt very strongly that she wasn't at fault for the accident. One Insurance has not explained why it didn't inform Mrs S, as its customer, of its decision, regardless of whether this decision was reasonable or not. I think this amounted to poor customer service and this is why I thought it should pay Mrs S a further £250 compensation.

The rest of my findings remain the same as they were in my provisional decision and now form part of the findings of this, my final decision.

My final decision

For the reasons above, I am upholding this complaint and asking One Insurance Limited to pay Mrs S a further £250 compensation for the distress and inconvenience it caused her. If One Insurance Limited hasn't paid Mrs S the £130 and £300 compensation it previously offered, it should pay it now.

One Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mrs S accepts my final decision. If it pays later than this it must also pay interest on it from the deadline date for settlement to the date of payment at 8% a year simple.

If One Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs S how much it's taken off. It should also give Mrs S a tax deduction certificate if she asks for one so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 23 September 2025.

Anastasia Serdari
Ombudsman