

## **The complaint**

Mr W has complained that Haven Insurance Company Limited unfairly found him liable for a motor vehicle accident.

## **What happened**

Mr W was in an accident when his car hit another car that was stationary and unattended. He claimed on his policy. Haven thought it couldn't defend the third party's claim for the damage to their stationary car. So it settled the claim, holding Mr W liable for the incident.

Mr W didn't think that was fair and complained. Haven didn't change its opinion, so Mr W brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. She didn't think Haven needed to take any further action.

Mr W didn't agree with our Investigator's complaint assessment, so the matter's been passed to me to determine.

## **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.

In bringing his complaint and responding to our Investigator's assessment of it Mr W's made a number of points. I've considered everything he's said and all his supporting evidence including the photographs, videos and diagrams etc he believes support his arguments. However, in this decision I don't intend to address each and every point raised. Instead I will focus on what I see as being the key issues at the heart of Mr W's complaint and the reasons for my decision.

Our rules allow me to take the above approach. It simply reflects the nature of our service as a (generally) free alternative to the courts tasked with resolving complaints with the minimum of formality. So, if there's something I haven't mentioned, it isn't because I've ignored it. I haven't. Instead I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome and to explain the reasons for my decision.

Mr W's account is that he was driving in the dark, on a foggy night, on an unlit road. He said he had moderated his speed for the conditions. The road was marked with a single continuous white line next to the kerb on the inside of the road and double continuous white lines in the middle separating the carriageways. Mr W said the road markings gave him reasonable confidence it would be free of stationary hazards. He said the presence of an 'abandoned' car was unforeseeable.

Mr W's key argument is that the third party's car was parked illegally and dangerously. He said it was facing the oncoming traffic and straddling the white line that followed the kerb. As a result he didn't see it until it was too late causing the collision. So he thinks Haven should have held the other driver – who left the car in that dangerous position – liable for the accident.

Before addressing Mr W's arguments I'll repeat, as our Investigator has previously explained, that it isn't the role of the Financial Ombudsman Service to decide liability for a

claim. Ultimately that's a matter for the courts. My role here is to consider if Haven has acted in a fair and reasonable way.

Like most motor insurers, Haven has a clause in Mr W's policy that allows it to settle a claim as it sees fit. This gives it the right to decide who it believes is liable for a claim, whether that liability should be full or shared or whether or not the matter should be decided in court. So, whilst we don't decide liability, we look to ensure that insurers act fairly in assessing the claim and in deciding whether to settle matters – based on a clear understanding of the evidence and circumstances surrounding the incident. With this in mind, I have carefully considered how Haven handled and considered Mr W's claim.

Having had the benefit of reading Haven's file I can see that it considered everything Mr W submitted. It also looked at where the accident happened. And it had a number of images showing damage to both cars. It also considered Mr W's arguments that it was the position of the third party car which caused the accident. Having done so it concluded that it couldn't reasonably hold the third party liable for the accident.

Haven's explained that there is an onus on drivers to drive at a speed suitable to the conditions, that allows them to avoid hazards. That is also my understanding. My further understanding is that insurers, and indeed the courts, will say the expectation is on a driver of a moving vehicle to adjust their driving to the conditions of the road. That includes being prepared for unexpected or difficult situations, for example the road being blocked. Further, there is also an expectation that in fog a driver should be able to stop within the distance that they can clearly see<sup>1</sup>.

But that didn't happen in this case. Mr W, while driving in fog, crashed into a car that was unattended and stationary. It's clear to me that Haven understood Mr W's points that he didn't expect the third party's car to be in the location where he hit it. Also that the conditions made it difficult to see. But none of that persuaded it that the third party had caused the accident.

Haven also noted Mr W's points that the car was left in a dangerous and – what he considered to be – illegal position. But Haven concluded that where the car was left would not change who was responsible for the accident. In doing so it was plainly aware that Mr W was the only driver of a car in motion at the time of the collision. And it's not the case that, as poorly parked as it might have been, the third party's car was left in such a position to make a collision unavoidable.

So, when accepting liability it's apparent to me that Haven concluded that if Mr W had adjusted his driving to suit the conditions – so that he could stop within the distance he could see – then the accident wouldn't have happened. In those circumstances Haven's concluded that he is responsible for the accident. I think that's a reasonable conclusion.

Mr W has made a number of arguments about the manner in which the third party's car was left and how he believes that these were breaches of the Highway Code which could have been illegal. But it wasn't Haven's role, and nor is it mine, to decide if the third party breached the Highway Code or whether or not, if there were breaches, those breaches amounted to illegal acts. Instead Haven was required to assess what or who effectively caused the accident and whether or not it had a reasonable prospect of defending a claim from the third party. Haven has clearly decided that the position of the other car did not, of itself, cause the accident. Instead it's concluded that it was Mr W's inability to avoid hitting the stationary car which was the principal cause of the accident. So it decided it would not be able to defend the third party's claim.

I think Haven's conclusion is reasonable here. It's worthwhile pointing out that Mr W said the police told him that the third party car had been left where it was since the previous day. So that means that every other car which had driven past it had also done so without hitting it.

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<sup>1</sup> Highway Code Rules 146 and 235

So, all those other drivers avoided an accident, regardless that the third party's car might have been parked badly, illegally or indeed dangerously. But Mr W didn't avoid an accident. And Haven thought he was at fault for causing it.

Similarly, Mr W has provided his theory for why the third party's car was left – or what he called 'abandoned' – where it was. But Haven concluded that the reason the third party's car was left in that location was irrelevant as to what caused Mr W to hit it while driving. I think Haven's reasoning here is fair. How the third party's car ended up where it did wasn't the reason that Mr W did not avoid driving into it.

It follows that I'm satisfied Haven's reached its liability decision after considering the relevant evidence. I'm equally satisfied that the conclusion it reached, that Mr W was liable for the accident, was fair and reasonable in the circumstances.

### **My final decision**

For the reasons set out above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 March 2026.

Joe Scott  
**Ombudsman**