

The complaint

Mrs E's representative complains on her behalf that UK Insurance Limited (UKI) unfairly decided liability on a claim made on her Motor insurance policy before any investigation took place.

References to Mrs E, or her representative, will include the other.

UKI are the underwriters of this policy i.e. the insurer. Part of this complaint concerns the actions of the intermediary. As UKI have accepted it is accountable for the actions of the intermediary, in my decision, any reference to UKI includes the actions of the intermediary.

What happened

A third-party collided with the front of Mrs E's car causing damage. Mrs E called UKI and made a claim on her motor insurance policy.

After the call UKI informed Mrs E by text message (SMS) that it intended to settle the claim as 50/50 split liability between her and the driver of the vehicle that reversed into her car.

Mrs E's representative said the fault was that of the driver of the other car and they had admitted fault when the incident took place. The representative said UKI gave no explanation of its position to settle the claim this way.

UKI said it was still in the process of carrying out a review of the claim and the circumstances of the incident. It said the SMS was to manage Mrs E's expectations.

As Mrs E's representative was not happy with UKI, he brought the complaint to our service.

Our investigator did not uphold the complaint. They looked into the case and said they were satisfied UKI had considered all information relating to the incident as it became available. And Mrs E's policy allows UKI to settle the claim how it chooses.

As Mrs E's representative is unhappy with our investigator's view the complaint has been brought to me for a final decision to be made.

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.

Our role is to consider whether UKI handled the claim in a fair and reasonable manner. It isn't to decide who was at fault for the accident.

Most motor insurance policies contain a term which allows the insurer to handle the claim how it sees fit. In this case I looked at the terms and conditions of the policy. On page 27 it says;

"3. Claims procedure – Our rights and your obligations

b. We are entitled to:

- *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;*

This is not unusual and is a feature of most motor insurance policies. This term essentially gives UKI a contractual right to settle the claim how it chooses. It doesn't need the agreement or consent of the policyholder.

But just because the term is in the policy, it is not fair and reasonable for an insurer to simply do as it pleases. The decision has to be based on facts and evidence.

I listened to the call made by Mrs E to UKI when she notified it of the incident. The UKI advisor opened the call by asking if Mrs E was calling to make a new claim, to which she answered yes.

During the call the UKI advisor gathered information about the incident. The UKI advisor told Mrs E liability regarding the incident would be recorded as under investigation at the moment. When Mrs E questioned why liability was in question as the third-party had rolled into her car, UKI's advisor explained that the third-party had to also be given the opportunity to give their version of events. The UKI advisor explained if the third-party gave a different version of events there was a possibility of it being recorded as a claim against Mrs E, but hopefully not.

The UKI advisor offered to book Mrs E's car in for the repairs to be made but she said due to the excess on her policy, and as there was not a lot of damage, she would wait to decide if to progress with the claim for damage until liability had been agreed as that of the third-party.

I consider the UKI advisor was clear of the process for deciding liability in this claim and about the process for organising repairs.

I looked at the SMS that was sent to Mrs E on 29 September 2022. It said;
"Claim Update: We have reviewed your claim in detail and based on what you have told us we intend to settle this claim on 50/50 split basis. We have sent our views to the other insurer and will update you accordingly once we receive their response".

Mrs E's representative said the SMS was unfair and UKI did not discuss the implications of proceeding in the way it intended. I saw when Mrs E contacted UKI for an explanation regarding the SMS it said it was still waiting for the third-party insurers to give their version of events and it had still not made any decision on liability at that time. It explained if there were any inconsistencies in the drivers statements it may not be able to prove who was at fault. It said the SMS was sent part of its service process and was to manage customer expectations.

I saw that after this SMS was sent and after Mrs E's representative contacted UKI, a further SMS update was sent which said;

"Claim Update: Your claim has been reviewed and we are still awaiting a response from the other insurer"

I am sorry that Mrs E and her representative were unhappy with the SMS received and felt that a decision had been made without the incident being fully investigated. However, I am satisfied that at the point this SMS was sent to Mrs E, that UKI were still investigating the claim and a decision on liability had not yet been reached.

Therefore, I do not uphold Mrs E's complaint and do not require UKI to do anything further in this case.

My final decision

For the reasons I have given I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 15 December 2023.

Sally-Ann Harding
Ombudsman