

The complaint

Mr H complains about U K Insurance Limited trading as Darwin ("UKI") and their decision to settle his claim on a fault basis.

What happened

Mr H held a motor insurance policy, underwritten by UKI. Unfortunately, on 8 June 2022, Mr H was involved in a road traffic accident in a local car park. So, he contacted UKI to notify them about this.

Mr H initially explained on the initial notification call that he'd been reversing out of his parking space when he'd hit a stationary third-party car parked next to him in a cross-hatched area where parking wasn't permitted. So, he didn't think he was liable for the accident, or any of the damage caused. On this call, UKI explained that the way a car was parked didn't impact liability and so, they thought Mr H was at fault.

Mr H disputed this. And he called UKI back, explaining the third-party car was in fact reversing when the accident happened and so, he this proved the third-party was at fault. Mr H also provided photographic evidence, alongside a short video clip he felt evidenced the third-party admitting they were reversing.

UKI considered Mr H's evidence and testimony. And they put this to the third-party insurer (TPI). But the TPI refuted this information and provided a witness statement they had obtained that they felt supported their insured's testimony that Mr H was at fault. UKI considered this and took the decision to settle the claim on a fault basis, making Mr H aware of this shortly after. Mr H was unhappy about this, so he raised a complaint.

Mr H didn't think UKI were fair to settle the claim on a fault basis. He disputed the witness statement the TPI provided, and he felt UKI hadn't placed enough emphasis on his testimony, or the video clip he provided. So, he wanted UKI to overturn their decision and record the claim as non-fault, to ensure his no claims bonus and future premium prices weren't negatively affected.

UKI responded to Mr H's complaint and upheld it in part. They thought they had acted fairly when settling the claim on a fault basis, considering the information available to them. But they did think they could've done more to keep Mr H updated during this process and so paid Mr H £25 to recognise any inconvenience this caused. Mr H remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and didn't uphold it. They thought the £25 payment to recognise UKI's failure to respond to Mr H within a reasonable time frame was a fair one, considering the impact this had. And although they recognised Mr H's strong belief regarding liability of the accident, they thought UKI were able to settle the claim as they saw fit. And in this situation, our investigator thought UKI had considered the claim, and all the information provided, fairly when reaching their decision. So, our investigator didn't think UKI needed to do anything more.

Mr H didn't agree. He thought the evidence he'd provided, including the video clip he sent, made it reasonably clear the third-party was at fault and that the witness statement was fraudulent. So, he maintained his belief that the claim should be settled on a non-fault basis, and that his no claims bonus and premium prices should be updated to reflect this. Our investigator's view remained the same and so, the complaint has been passed 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'm not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

I note part of UKI's complaint response referred to the failure to communicate with Mr H effectively. And they paid Mr H £25 to recognise this failure. I can't see that Mr H has disputed this payment for this aspect of the complaint and so, I think it's reasonable for me to assume this has been accepted and this aspect of the complaint resolved. But for completeness, I think this £25 was a fair payment that falls in line with our service's approach as I think it adequately recognises any inconvenience Mr H would've felt waiting for a call back, while also taking into consideration the actual impact on Mr H, as I note he didn't chase UKI for further communication during the delay. So, I won't be discussing the merits of this part of the complaint in any further detail or recommending any further payment.

And before I discuss the merits of Mr H's complaint about the way the claim was settled, I want to recognise the impact this complaint has had on Mr H. I recognise Mr H feels strongly about the circumstances of the accident, and who was to blame for the damage caused to both cars. As Mr H feels the third-party was responsible, I can understand why he'd feel unfairly treated by UKI who, as his insurer, chose to settle the claim in the third-party's favour. And I can understand why he'd be left frustrated at the impact this decision had on his no claims bonus and so, future insurance premiums prices.

But for me to say UKI should do something more than they have already, such as overturn their claim decision or reinstate Mr H's full no claims bonus, I first need to be satisfied they've done something wrong that hasn't already been adequately compensated for. So, I'd need to be satisfied UKI failed to act within the terms and conditions of the policy Mr H held when they settled the claim on a fault basis. Or, if I think UKI did act within these, I'd need to be satisfied they acted unfairly in some other way. And in this situation, I don't think that's the case.

And before I explain why I've reached this decision, I think it would be useful for me to explain what I've been able to consider, and how. It's not my role, or the role of our service, to re-underwrite the claim, as we don't have the expertise to do so. So, I won't be speculating on how I think the claim should've been settled. Instead, it is my role to consider the actions UKI took when settling the claim, to ensure they've acted fairly and reasonably. And when considering this, where necessary, I've thought about their actions against what I think another insurer would most likely have done in the same situation.

I've seen the terms and conditions of the policy Mr H held. These explain under the section titled *"Our rights and your obligations"* that UKI 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 under this policy". So, I think UKI were able to take over, and settle, any claim made against Mr H's insurance policy, without Mr H needing to agree with their decision. And because of this, I don't think I can say UKI acted outside of the terms and conditions when settling the claim on a fault basis.

But as I've explained above, I must also be satisfied UKI acted fairly when taking this decision. And I'd expect UKI to consider any and all of the testimony and information provided by both Mr H and the third-party before coming to this decision.

In this situation, I can see UKI provided the TPI with Mr H's testimony and the photographic and video evidence he supplied. So, I'm satisfied UKI put Mr H's challenge to the TPI reasonably, as I'd expect them to do.

And I can see following this, the TPI provided comments on the video footage Mr H supplied as well as a witness statement supporting the third-party version of events. As this was new information, I'd expect UKI to consider this before deciding on how to settle the claim. And I'm satisfied they did.

In this situation, I think UKI were fair to take into consideration the information the TPI provided alongside the differing version of events Mr H provided on the initial notification call when he said the third-party was parked, compared to his later allegation that the third party was reversing.

And when all this information is considered together, I think UKI were fair to decide that the claim would most likely be found in favour of the third-party should it progress to court, considering the third-party, the witness statement and Mr H all stated the third-party car was stationary. And I think another insurer would most likely have concluded the same based on the above.

And in a situation such as this where a claim is unlikely to be defended successfully, an insurer would be expected to mitigate the costs of the claim and so, I wouldn't expect UKI to challenge the claim and incur legal costs here. So, I think UKI have acted fairly when deciding to settle the claim on a fault basis on this occasion and I don't think they need to do anything more.

I understand this isn't the outcome Mr H was hoping for. And I appreciate this means Mr H's no claims discount, and future premium prices, are likely to be impacted. I've carefully thought about the impact this will have on Mr H, both emotionally and financially. But for me to say UKI should do something more, I need to be satisfied they've made a mistake here.

And while I do recognise Mr H's opinion that they have, considering the video clip he feels shows the third-party admitting they were reversing, I don't think the length of this clip provides fair and reasonable context of why this was said, or what it referred to, considering it was a very short snippet of a larger conversation held at the time of the accident. So, I don't think UKI have acted unfairly or unreasonably when deciding to settle the claim on a fault basis, even with this video clip available to them.

My final decision

For the reasons outlined above, I don't uphold Mr H's complaint about U K Insurance Limited trading as Darwin.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 August 2023.

Josh Haskey
Ombudsman