

The complaint

Mr S complains about U K Insurance Limited's ("UKI") liability decision following a claim against his car insurance policy.

What happened

Mr S was involved in an accident while driving his car. He says he approached a stationary car, which wasn't displaying any lights or indicator, and as he attempted to overtake the car, it suddenly pulled out hitting his car. Mr S says, initially, he received a letter holding the third-party fully at fault, but this was followed by another letter splitting liability 70/30 in favour of the third-party. Mr S wasn't happy with UKI's liability decision, so he complained. UKI responded and maintained their decision to settle the claim based on 70/30 split liability terms in favour of the third party. They referred to case law which supported their decision and also The Highway Code.

Our investigator looked into things for Mr S. He thought UKI hadn't acted unfairly in relation to their liability decision. Mr S disagreed so the matter has come 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've decided not to uphold the complaint. I understand Mr S will be disappointed by this but I'll explain why I have made this decision.

My role requires me to say how a complaint should be settled quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute. The key dispute here relates to UKI's decision on liability and to hold Mr S partly responsible for the accident.

When an accident occurs, it's the insurer who'll decide how the claim should be settled - this includes determining which party was at fault. An insurer might choose to accept liability, propose or agree to split liability, or choose to defend any allegation of liability. While this decision rests with an insurer, and it's not the role of our service to decide who is at fault for an accident, we can look to see whether an insurer has handled the claim in a fair and reasonable manner. So, I've looked into how and why UKI reached their decision and the evidence and arguments they considered before making a decision.

The information shows Mr S reported the accident and he explained he wasn't claiming so the incident was recorded for information purposes only. Mr S then called again to make a claim. Claim notes provided by UKI show the third-party insurer accepted liability and UKI then sent a letter to Mr S confirming this. The claim notes show the third-party insurer then considered the dashcam footage and changed their position on liability. They were now of the view liability should be split 70/30 in favour of the third-party as the accident circumstances were consistent with existing case law - and that case was settled on the

same split liability terms. UKI then write to Mr S and explain they've had to agree to these liability settlement terms, as they feel it's correct.

The case law UKI refer to here relates to a case where UKI say the circumstances are similar to Mr S's accident – so I've looked into this case. This case describes the circumstances as, *"The claimant was on a main road approaching a junction, intending to turn right. As he turned, he was hit by a car from behind attempting to overtake. The court apportioned liability 70/30 in the claimant's favour on the basis that although overtaking car was primarily responsible, the claimant used his mirrors only once."*

I've viewed the dashcam footage, and this shows Mr S driving along a main road and approaching the third-party's stationary car. As Mr S attempts to overtake the third-party's car, they start turning right and collide with Mr S's car. The dashcam footage shows there's a road to the third-party's right side. It's not clear whether the third-party was attempting to turn right into this road or just moving off, but the third-party car does appear to move towards the right. In view of Mr S's accident circumstances, I can't say UKI have acted unfairly in taking into account the case law here.

I acknowledge Mr S says the two accident circumstances aren't identical as he was attempting to overtake a parked car which wasn't indicating, and not a car about to take a right turn. I do understand Mr S's argument here. The dashcam footage shows the third-party car is stationary on Mr S's approach towards it. There's a road on the right but, despite the opposite lane being clear, the third-party car doesn't move, and doesn't have its indicator on or any other lights. So I do understand why Mr S believed the third-party car was stationary. But, as Mr S overtakes, the third-party car does start moving and edges towards the right.

Also, having viewed the dashcam footage, I'm not persuaded the third-party car was parked on the left side of the road. I think the third-party car is positioned more towards the middle of the road which suggests it wasn't parked up. This appears to be recognised by Mr S's passenger who refers to the third-party car being, *"...in the middle of the road"* immediately before the collision. So, while I acknowledge Mr S's points about any disparity between his accident circumstances and the case law, I don't believe the two circumstances are that dissimilar that it would be unreasonable for UKI to take it into consideration when assessing liability in Mr S's claim.

UKI also refer to Rule 167 of The Highway Code which says, *"Do not overtake where you might come into conflict with other road users. For example, approaching or at a road junction on either side of the road."* Looking at the dashcam footage, I can't say UKI have acted unreasonably in taking this into consideration when assessing liability. UKI also say they'd checked the position with their litigation team for a legal opinion and they agree with the 70/30 liability split. They say their decision has been based on case law and the Highway Code. Taking this all into account, I can't say UKI have acted unfairly here. I say this because the information shows they've taken into account all the information available – this includes Mr S's account of events, the dashcam footage, case law and The Highway Code. The information also shows they sought guidance from their litigation team.

I acknowledge Mr S says he was informed liability wasn't in dispute, but this decision was then reversed. I understand this was frustrating for Mr S, but the information shows the third-party insurer initially accepted liability but then very shortly afterwards, changed their decision. I understand Mr S believes the original liability decision is binding, but it's not unusual or uncommon for insurers to change their liability position while dealing with a claim – particularly when reviewing any new evidence. In this case, it's clear the third-party insurer changed their position on liability, but I can't look at their actions. I can only look at UKI's actions, and in this case, I accept they initially confirmed liability had been accepted, but

later confirmed the position had changed. But this was down to the third-party insurer changing their position and not as a result of any error by UKI.

I do acknowledge the accident circumstances have been upsetting and frustrating for Mr S, and I can see he has strong feelings about who's responsible for the accident. But, my role here is to decide whether UKI have acted fairly and reasonably when reaching a decision on liability – and for the reasons I've mentioned, I think they have. I wish to reassure Mr S I've read and considered everything he has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

My final decision

For the reasons I have given, it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 January 2024.

Paviter Dhaddy
Ombudsman