

## **The complaint**

Ms G and Mr S have complained that Watford Insurance Company Europe Limited have unfairly required them to pay 50% of the other driver's claim under their motor policy following an accident.

Ms G and Mr S have a representative. However, in order to keep things simple, I shall just refer to Ms G and Mr S throughout.

## **What happened**

Ms G a named driver on Mr S' policy was driving and was involved in an accident with another driver on 28 January 2022. The other driver contacted Watford to explain the vehicle Ms G was driving had been in a collision with his vehicle. Watford said it tried to make contact with Ms G and Mr S, without success. So, it wrote to them advising of the accident. Ms G and Mr S then responded on 15 February 2022 confirming Ms G had been involved in this accident.

On investigation, it transpired Mr S wasn't the registered keeper of the car. In the application for the policy Mr S said he was the registered keeper. On this basis Watford decided Mr S had made a qualifying misrepresentation under the Consumer Insurance (Disclosure and Representations) Act 2012. It decided this misrepresentation made by Mr S was reckless and made not caring if it was true or otherwise.

That meant Watford was not providing indemnity to Ms G and Mr S for this accident. However, under road traffic legislation Watford is duty bound to respond to the claim from the other driver. It was decided between Watford and the other driver's insurers that the best outcome was that this other driver's claim should be settled on a 50/50 basis.

Under the terms of the policy with Mr S and Ms G, Watford are entitled to have Mr S and Ms G refund Watford's outlay to the other driver's insurer for the other driver's claim. That other driver's claim was a total of £2,859.00 and Watford said Mr S and Ms G were responsible for 50% of that, namely the sum of £1,474.08.

Ms G and Mr S said this was excessive and they had a quote from the other driver saying the repair cost would only be £879.60. Watford said the other driver's insurers provided evidence of the repair costs plus car hire costs which came to the total claimed.

Ms G and Mr S have specifically confirmed they are not complaining about Watford's lack of indemnity to them, and simply complaining about the extent of the refund Watford is expecting them to pay.

Ms G and Mr S continued to disagree this was fair and brought their complaint to us. The investigator was of the view Watford hadn't done anything wrong. Ms G and Mr S disagreed so their complaint has been passed to me to decide.

## 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 this complaint. I'll now explain why.

I appreciate and understand Ms G and Mr S will be disappointed. However, my role is to assess whether Watford adhered to its policy terms with Ms G and Mr S. Watford is also under a legal duty to deal with the other driver's claim against Ms G and Mr S' policy.

Also, for the avoidance of any doubt, I am not considering the merits of whether Watford was correct or not in refusing to indemnify Ms G and Mr S. Ms G and Mr S were very specific in their correspondence with the investigator, that their complaint was not about Watford's decision to refuse indemnity, but solely about the amount of the other driver's claim, given the initial quote given by the other driver to Ms G and Mr S for the repair costs of his car.

So, Watford received the formal Audatex report detailing the damage on the other driver's car which stated the car wasn't driveable. That report also detailed the costs payable for the repair. Plus, it received the invoices for the car hire. It's clear to me that these costs were verified coherently given the manner of their presentation to Watford from the other driver's insurers.

Both Watford and the other driver's insurers decided that it was most likely each driver was 50% to blame for causing the accident, given the lack of independent witnesses. That means the other driver's insurers pay 50% of the other driver's costs and Watford pays the other 50%. This is because there is no indemnity given by Watford for any claim Ms G and Mr S might have had. For the avoidance of further doubt, it does appear Ms G and Mr S didn't have any claim to make in any event, or at least there is no mention of that.

I consider this split liability agreement between Watford and the other driver's insurers is eminently sensible here, given it avoids the added costs of any court proceedings which would increase the contribution payable by Ms G and Mr S. Further given it's a 50/50 split on liability, that further reduces the extent of Ms G and Mr S' refund costs.

As no indemnity is given by Watford to Ms G or Mr S given the issues over the information given in applying for the policy, this is therefore down to Ms G and Mr S to pay.

This is because of the policy terms which are similar to every other motor policy for these circumstances. So, these are not unusual terms or indeed just particular to Watford's policy. Every motor policy has policy terms concerning these same issues.

The specific policy terms of Watford's policy say the following:

*'We, as Your Insurer, can:*

- take over and conduct the defence or settlement of any claim; and*
- take legal action over any claim.*

*These actions may be taken in Your name or the name of any insured person.*

*Failure to notify any required changes and to take reasonable care to ensure that any information supplied is provided honestly, fully and correctly may result in Your Policy being cancelled or treated as if it never existed, or in Your claim being rejected or not fully paid.*

*.....*

*3. Right of recovery*

*If under the laws of any country in which this insurance applies, We have to make payments which but for those laws would not be covered by this Policy, You must repay the amounts to Us. If any claims or other monies are paid to You by mistake for any reason, or a claim has been paid which We later find to be fraudulent, false or exaggerated. You must repay the amount paid by Us. You or the person who caused the accident must also repay Us any money We have to pay because of any agreement We have with the Motor Insurers' Bureau. Any payment We make under this condition will prejudice Your No Claim Bonus and will also mean that there will be no entitlement to a refund of premium if the Policy is cancelled or declared void.'*

This essentially means that Watford is entitled to deal with any claim against Ms G and Mr S's policy as it sees fit. More so given it's under a legal duty to do so due to the road traffic legislation.

This service has no authority to question the costs of the claim more so when those costs concern those of another driver's insurers. The costs were backed by appropriate pricing data plus car hire charges on legitimate invoices. Watford's only recourse to show they were unreasonable would be to let a court decide the extent of these costs of repair and car hire. That in turn would increase Ms G and Mr S' outlay considerably which I don't consider would be the reasonable course of action for Watford to take here. Watford's policy terms do permit it to take over the settlement of any claim. And here, I consider it has done so reasonably and fairly for Ms G and Mr S, given the lack of indemnity available to them.

Also, I can see that the other driver appeared to provide a quote to Ms G and Mr S for the repair of his car in the sum of £879.60. But there is no evidence before me showing Mr S had decided to deal with the other driver himself or seek to pay this quote. It does appear that when the other driver informed his insurers of the accident as he was required to do, that his insurers then took over the settlement of his claim, presumably under the same type of policy conditions in his policy which I've explained exist in Watford's policy. Insurers are entitled to take over and settle any claims as I explained above. This is standard industry practice.

In conclusion, I do consider Watford has acted reasonably in agreeing the 50/50 liability split and agreeing the claim amount. That in turn does lessen Ms G and Mr S' exposure for even higher costs to be refunded, given the lack of indemnity by Watford to Mr S and Ms G.

### **My final decision**

So, for these reasons, it's my final decision that I'm not upholding this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G and Mr S to accept or reject my decision before 3 January 2024.

Rona Doyle  
**Ombudsman**