

## **The complaint**

Mrs M complains that Acromas Insurance Company Limited (AIC) unfairly accepted liability for a car accident without properly reviewing all the available evidence. She also complains about the way they handled her claim.

Mrs M's son helped her make this complaint. To keep things simple, references to Mrs M and AIC include representatives and agents acting on their behalf.

## **What happened**

Mrs M had motor insurance with AIC. On 26 May 2019 she was involved in a serious car accident at a road junction. She told AIC the traffic light had been green in her direction when the collision happened, and that the police had details of witnesses who could confirm this.

Mrs M says AIC sent her a letter dated 14 August 2019, saying they were attempting to obtain full reimbursement of losses incurred from the other party and that they'd keep her updated.

On 7 September 2019 AIC received a copy of the police report on the accident – they accepted liability for the accident less than two weeks later. But Mrs M didn't hear about this until 9 December 2019, when she contacted AIC about pursuing a personal injury claim using the legal protection cover provided by her policy. AIC agreed to the appointment of a solicitor, L, to handle a personal injury claim on her behalf.

On 23 December 2019 Mrs M complained to AIC about their handling of her claim - and that they shouldn't have accepted liability for the accident without making further enquiries. She told them the police had produced an updated report which didn't blame either driver for the accident. And that there was CCTV footage and two independent witnesses to the accident. She said that, by incorrectly admitting liability, AIC had adversely affected her future car insurance premiums and her chances of making a successful claim for the serious injuries she'd suffered. She asked them to carry out further investigation and reconsider their decision.

In response, AIC said they'd made the right decision about liability for the accident. They said that, as no new evidence had come to light, they hadn't changed their stance on this. But they apologised for not having updated her at the time and for failing to acknowledge some of her correspondence. They offered her £100 compensation for the inconvenience this had caused.

Mrs M complained to AIC again, saying they couldn't make the right decision about liability without obtaining the updated police report, the CCTV footage, and a statement from the independent witness.

On 1 July 2020 AIC sent Mrs M a letter asking whether she'd be willing to attend court if necessary. Upset by this, Mrs M contacted AIC to ask why she needed to attend court if they weren't defending the third party's claim against her. They told her to disregard this letter.

She told them again that the initial police report had been incorrect, and that other evidence was available.

AIC sent their final response to Mrs M's complaint on 10 August 2020. They said they'd accepted liability because they couldn't show the other driver had acted negligently. They said a green traffic signal means to proceed with caution, even with the right of way. They said the greater onus of care would be on Mrs M, as she was crossing two lanes of oncoming traffic.

AIC acknowledged that Mrs M had made them aware of a witness who could confirm she'd gone through a green traffic light. They said L was responsible for obtaining this, as it formed part of the evidence needed to support her personal injury claim. They said they were satisfied that they hadn't made any errors in their correspondence. But they increased their offer of compensation to £200 for Mrs M's loss of expectations.

Our investigator looked into what had happened. She noted that AIC's policy documents gave them a contractual right to take over and deal with a claim in Mrs M's name - and that they didn't need her approval for this. She felt the initial police report was clear and hadn't mentioned any witnesses.

The investigator was satisfied that AIC had made reasonable attempts to obtain the CCTV footage from the police, but they'd been told it wasn't available. And that they'd reviewed their decision when the CCTV footage was provided; but found it to be inconclusive. She noted L had agreed to pursue further evidence, including a statement from the witness. And that AIC had agreed to review their liability decision based on that witness statement, which she didn't consider to be unreasonable in the circumstances.

The investigator didn't think AIC had acted unreasonably by writing to Mrs M asking whether she'd be prepared to attend court. Although she agreed that they could have updated Mrs M sooner about their decision to accept liability, she felt their offer of £200 was fair for the stress and inconvenience this caused. So, she didn't think AIC should have to do anything more to resolve this complaint.

Mrs M disagreed. She said she'd told AIC several times that further evidence was available, but it had taken eight months of stress, trouble, and inconvenience to persuade them to agree to look into this. She said it would have been far more likely that the witness would have been traced if AIC had progressed things properly.

Mrs M also didn't accept that it was reasonable for AIC to send her a letter about attending court. She said this was another example of the incompetent way in which her claim had been handled – and that this had added to her stress whilst she was trying to recover from her injuries.

### **My provisional decision**

On 14 February 2022 I issued a provisional decision, saying:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*The Financial Conduct Authority (FCA) sets out rules and guidance that insurers such as AIC must follow – these are set out in the Insurance Conduct of Business Sourcebook (ICOBS). This includes a requirement to handle claims promptly and fairly. I've kept this in mind while reviewing Mrs M's complaint.*

*The content of the initial police accident report isn't disputed. It said that, from checking CCTV, it would appear Mrs M's car had gone through a red light causing the collision. But Mrs M feels strongly that AIC shouldn't have made a decision about liability on the police report alone, without obtaining a copy of the CCTV footage or statements from the independent witnesses she'd told them about.*

*Having given careful thought to this point, I can't say AIC did anything wrong by accepting liability based on the report they received from the police in September 2019. I think it was reasonable for them to assume that report was based on information obtained from all the available sources of evidence the police had identified at the scene of the accident – including any witnesses and CCTV footage.*

*AIC have provided a copy of Mrs M's policy booklet, which I've reviewed. I can see that AIC have the contractual right to take over and deal with the third-party claim made against her. I've seen nothing to suggest they needed to obtain her permission or agreement before deciding whether to accept liability. But both parties agree there was an expectation that AIC would contact Mrs M to explain their decision.*

*Mrs M has told us that, as soon as she heard AIC had accepted liability, she made enquiries with the police about the content of their accident report, what the CCTV showed and whether they'd got the witnesses' contact details. She says, and I accept, that she'd have made these enquiries much sooner if AIC had told her about their decision in September 2019. I'll come back to this point when I discuss what AIC should do to put things right.*

*I've seen evidence showing that, with the complaint she made to AIC on 23 December 2019, Mrs M attached a copy of an email she'd received from the police. I've seen a copy of that email, in which the police officer said the insurance company possibly hadn't seen the full write-off for the collision, which didn't apportion any blame to either driver.*

*Mrs M feels AIC should have worked with L to request the additional evidence needed to dispute liability for the accident, but they failed to do so. She feels confident that, after the accident, one of the witnesses would have provided a statement confirming the traffic light had been green in her direction. But that, after the amount of time that's passed, there's now little prospect of that witness coming forward. I've looked into the points she's made.*

*I haven't seen any evidence as to the date or basis on which L were appointed. But I can see that Mrs M's policy included legal protection cover. Under the terms of the policy, if her personal injury claim had reasonable prospects AIC would choose an appointed representative to act on her behalf. "Reasonable prospects" is defined as at least 51% chance of the claim succeeding. It follows that, when AIC chose L to act for Mrs M, they considered there to be at least 51% chance of proving the third party had been to blame for the accident.*

*I've seen evidence confirming L had got in touch with Mrs M by 19 December 2019. She told them that AIC had accepted liability for the accident and asked how she could proceed. AIC have told us that L contacted them on 14 January 2020 asking them for evidence and querying whether liability had been accepted. They've told us that L chased them for a response several times during February, March, and April 2020. And that, on 14 April 2020, L asked them to formally retract their acceptance of liability due to the CCTV evidence having become available. I've seen no evidence showing AIC responded to L's emails.*

*AIC have told us that, on 6 August 2020, it was agreed that L would pursue the amended police report and witness details to see if evidence could be obtained to prove Mrs M was not at fault. They've told us they wouldn't retract their admission of liability until they had*

*evidence to support them doing so. But that they saw no reason to duplicate the effort of obtaining this evidence. I consider this approach to be fair and reasonable.*

*But I have to bear in mind that Mrs M brought this additional evidence to AIC's attention on 23 December 2019. I've seen no explanation as to why it took until 6 August 2020 – a delay of more than seven months – to agree who would try to obtain that additional evidence. I can see that this lack of any apparent progress has increased the upset Mrs M has experienced.*

*The evidence I've seen suggests L began trying to contact the witness in August 2020 - 15 months after the accident. And that all attempts have been unsuccessful. I accept that the likelihood of a witness coming forward decreases over time. And whilst I don't find AIC to be the sole cause of the delay in contacting this witness, I'm not satisfied that they did enough to progress things promptly for Mrs M.*

*Mrs M has told us that she was further distressed when she received AIC's letter dated 1 July 2020, asking whether she'd be prepared to attend court if necessary. AIC have told us that this was sent as a result of a communication they'd received from the third-party insurer about recovery of their losses. Although I can understand why Mrs M would find it confusing and distressing to receive this letter, I don't consider AIC to have done anything wrong by sending it to her.*

#### Putting things right

*There's no way of knowing whether the witness would have come forward if he'd been contacted sooner after the accident. Or whether he'd have been able to provide evidence that would have been helpful to Mrs M.*

*But I think AIC's failure to notify Mrs M of their liability decision, and the delay in agreeing who would make enquiries into the additional evidence she'd told them about, lessened the chance of further valuable evidence being obtained. And I'm satisfied that this increased the distress and inconvenience Mrs M experienced at a time that was already very difficult for her, whilst she was recovering from her injuries.*

*I note that AIC have offered £200 compensation. I bear in mind the fact that Mrs M's son has helped her with this claim, which has no doubt reduced the amount of trouble she's been put to. But based on the evidence I've seen so far, I consider the sum of £450 to more fairly reflect the upset Mrs M has experienced, as well as her loss of opportunity.*

I said I was minded to direct AIM to pay Mrs M the total sum of £450 compensation for the upset and loss of opportunity she experienced. I invited both parties to send me any further comments or information they'd like me to consider.

#### **Responses to my provisional decision**

AIC didn't respond. Mrs M sent a detailed reply - I'll summarise the points she made:

- AIC were told about the availability of CCTV footage and independent witnesses by telephone on 18 July 2019 and 7 August 2019. This should have been explored to prevent incorrect acceptance of liability.
- No response was received to her initial complaint for over three months. When a response was received it consisted of two contradictory letters, both dated 2 March 2020. A further complaint was made on 14 April 2020. No response was received until 10 August 2020.

- AIC shouldn't have sent the letter dated 1 July 2020. When she queried it, AIC told her that they didn't know why this letter had been sent, she'd only been sent some of the questions and she should ignore it.
- Rather than just being a case of extremely poor customer service, once a decision was made to accept liability there also seems to have been an element of obstruction and wilful disregard of the issues and evidence that had been brought to their attention on numerous occasions over a prolonged period of time. Looking at the timeline of events, lack of response and inordinate amount of time taken to respond to complaints it's difficult to understand how so many mistakes could be made inadvertently.
- Although her son helped her with the claim due to her age and serious injuries she sustained, this hasn't really shielded her from the stress and inconvenience of trying to resolve this matter.

Mrs M said that, although it will never fully compensate her for the time, stress and detrimental effect on the outcome of the case, compensation of between £550 and £750 would be more acceptable.

### **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.

I'm grateful to Mrs M for taking the time to respond to my provisional decision. Having carefully considered the points she's made I'm not persuaded that I should change my findings.

I don't dispute that Mrs M made AIC aware of the availability of CCTV and independent witnesses before they received the police report. But as I explained in my provisional decision, I find it reasonable for AIC to assume that the police report received in September 2019 took into account any witnesses and CCTV footage. So I can't say AIC did anything wrong by accepting liability at that stage.

I appreciate Mrs M feels strongly that AIC have made a series of errors that obstructed the progress of her claim. But the role of the Financial Ombudsman Service isn't to punish businesses. Where we find that a business has got things wrong, we award compensation for the overall impact that had on the customer - not the number or nature of the mistakes made. I consider the sum of £450 compensation to fairly reflect the upset and loss of opportunity Mrs M experienced in this case.

### **My final decision**

For the reasons set out in my provisional decision, I uphold this complaint and direct Acromas Insurance Company Limited to pay Mrs M a total sum of £450 in compensation for the upset and loss of opportunity she's experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 29 April 2022.

Corinne Brown  
**Ombudsman**