

The complaint

Mrs L complains about her motor insurer, LV Insurance Company Limited ('LV') holding her at fault for a collision between her vehicle and a motorcycle.

In referring to LV, I include their agents and representatives.

What happened

In January 2022 Mrs L's car was involved in an accident, when her vehicle collided with a motorcycle. At the time, Mrs L was changing lanes from the right-hand lane to the middle lane, in slow-moving traffic. The motorcycle was weaving between lanes and came up on the inside of Mrs L's vehicle.

Mrs L contacted LV to notify them of the accident. She also provided rear-facing footage from her dashcam, which she said showed the motorcycle coming up the inside at speed. So, Mrs L maintained she wasn't at fault for the collision.

However, after considering the circumstances of the accident (including the dashcam footage) LV decided Mrs L was at fault for the collision. This meant they would settle the third-party claim, as they thought there were no prospects of pursuing a claim against the third-party or disputing their claim. LV also requested a legal opinion on the circumstances of the collision, including the dashcam footage. The legal opinion was also that Mrs L would be considered at fault for the collision, particularly as she was the party changing lanes and so it was her responsibility to ensure it was safe to do so. The legal opinion also cited specific provisions of the Highway Code that covered changing lanes and where traffic was slow-moving (and cycles and motorcycles filtering between traffic and passing on either side).

Mrs L then complained to LV, maintaining her view she wasn't at fault for the collision and that the motorcycle was approaching at speed. But LV didn't uphold the complaint. They again referred to Mrs L being the party changing lanes and her responsibility to do so safely. They also referred to sections of the Highway Code and to the legal opinion they'd have no prospects of success in pursuing the cost of the claim or disputing any third-party claim.

Unhappy at LV's decision, Mrs L complained to this service. The main elements of her complaint were that LV had unfairly held her responsible for the collision, when she maintained she'd adhered to the Highway Code and despite the dashcam footage from her vehicle that she said showed the motorcycle approaching at speed. She wanted LV to acknowledge she'd followed the Highway Code and the collision was due to the motorcycle speeding. She also wanted the excess to be a maximum of £300.

Our investigator didn't uphold Mrs L's complaint, concluding LV hadn't acted unfairly. He thought LV were entitled to decide how to settle the claim, including the question of liability or fault. He also thought LV assessed the claim reasonably given the information and evidence available, including Mrs L's version of events and the dashcam footage. He also thought it reasonable for LV to seek a legal opinion, given their experience and expertise in determining liability. While the investigator understood why Mrs L felt she hadn't had the opportunity to make a statement about the incident, but noted her summary of the incident was noted by LV when the claim was first lodged by Mrs L. And that she subsequently had a

detailed discussion of the incident with LV. Where liability was contested by the parties involved in an accident, it was reasonable for LV (drawing on their legal opinion) to determine where fault should lie.

While Mrs L was told there might be a possibility of shared fault (liability) that would have led to the deduction of a £300 excess, in holding Mrs L at fault for the collision, LV had applied the excess in accordance with the policy terms and conditions (although they did waive, as a goodwill gesture, an additional £200 excess that would have applied for Mrs L using a non-approved repairer).

Mrs L disagreed with the investigator's view and requested an ombudsman review the complaint. She said she didn't accept liability for the collision and that she'd shown the motorcycle was speeding at the time of the accident.

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 appreciate Mrs L feels very strongly she's been unfairly held to be at fault by LV for the collision when - as she sees it - the collision was caused by the speed of the approaching motorcycle. And the dashcam footage proves it. However, my role isn't to determine the question of fault or liability – it's to decide whether LV have acted reasonably towards Mrs L.

The central issue in Mrs L's complaint is that LV have unfairly held her at fault for the collision, given her view the collision was caused by the motorcycle speeding (shown by the dashcam footage). She also says she always uses her mirrors to check before changing lanes. LV say the circumstances of the accident, taken with the provisions of the Highway Code, mean Mrs L was at fault for the collision. And having reviewed the dashcam footage and asked for a legal opinion, they've acted fairly and reasonably taking account of the circumstances, concluding they'd have no prospects of success in pursuing the cost of the claim or disputing any third-party claim.

I've considered both views carefully, together with all the evidence available. That includes what Mrs L has told us and associated information and evidence. It also includes LV's contact notes and their legal opinion. Having considered all these things, I've concluded LV have acted fairly and reasonably in deciding to hold Mrs L at fault for the accident. I know this will be disappointing to Mrs L, so I'll set out the key reasons why I've come to this conclusion.

First, I've considered the nature of the collision, together with the provisions of the Highway Code cited by LV in support of their decision. From what I've seen, Mrs L was changing lanes from the right-hand lane to the middle lane, where she collided with the motorcycle coming up on the inside. The traffic was slow-moving and the motorcycle was filtering between the traffic. In the circumstances, as set out in their final response, LV refer to three provisions (rules) of the Highway Code:

Rule 88 (for motorcycles) "Manoeuvring. You should be aware of what is behind and to the sides before manoeuvring...When in traffic queues look out for ...vehicles...changing lanes...Additionally, when filtering in slow-moving traffic, take care and keep your speed low."

Rule 133 (for all drivers and riders) "If you need to change lane, first use your mirrors and if necessary take a quick sideways glance to make sure you will not force another road user to change course or speed. When it is safe to do so, signal to indicate your intentions to other road users and when clear, move over."

Rule 151 (for all drivers and riders) "In slow-moving traffic. You should..."

- *Be aware of cyclists and motorcyclists who may be passing on either side."*

I think it was reasonable for LV to conclude that, as the party changing lanes, it was Mrs L's responsibility to ensure it was safe to do so. It's also clear from email exchanges between Mrs L and LV and from LV's contact notes that LV took account of what Mrs L told them about the circumstances of the collision when she notified them of the accident. LV also requested the dashcam footage of the collision taken from her vehicle, which she provided to them. As the footage was rear-facing, it would have shown the motorcycle approaching and then (it would seem) the collision. It would also (as Mrs L maintains) given an indication of the approach of the motorcycle and its speed. I think it reasonable for LV to have considered what Mrs L told them and the dashcam footage in deciding whether they could contest liability for the collision (and whether to hold Mrs L at fault). The contact notes also record a lengthy discussion between LV and Mrs L after she'd provided the dashcam footage. The notes also indicate LV considered Mrs L's point about the speed of the motorcycle. Again, I think that's reasonable.

I've also considered the legal opinion LV obtained, when it became clear she didn't agree with their initial decision that they would have no reasonable prospect of pursuing the third party for the claim costs (that is, Mrs L would be deemed at fault for the collision). The dashcam footage was provided to the legal advisor to inform their consideration, along with the circumstances of the collision. The legal opinion cites the three Highway Code rules set out above together with other circumstances of the collision, coming to a clear view that Mrs L would be liable for the collision. As a legal view, I'm persuaded it was fair and reasonable for LV to have sought a view and to accept it (as confirmation of their initial decision).

The policy terms and conditions also enable LV to "*conduct, defend and settle any claim*". This is a standard feature of insurance policies, so LV acted in line with the policy terms when exercising their right to settle the claim, including the third-party claim from the insurer of the motorcycle.

Taking all these points into account, I've concluded LV acted fairly and reasonably when considering the circumstances, evidence and information about the collision and deciding to settle the claim (including the third-party claim) and to deem Mrs L at fault for the collision.

My final decision

For the reasons set out above, it's my final decision not to uphold Mrs L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 20 September 2022.

Paul King
Ombudsman