

## **The complaint**

Mr P complains about Mulsanne Insurance Company Limited's (MICL) handling of a claim under his Commercial Vehicle Motor Insurance policy.

## **What happened**

Mr P took out a Commercial Vehicle Motor Insurance policy with MICL. In February 2022, Mr P made a claim following an incident he was involved in. Mr P said he was driving on the motorway in the fast lane (right hand lane), and as he moved over to the middle lane, the third-party also moved over from the first lane, causing a collision. The third-party vehicle struck the side of Mr P's vehicle. Mr P said the third-party admitted liability at the scene of the accident.

Mr P's vehicle was deemed a total loss by MICL and they proceeded to settle the claim on a 50/50 basis. MICL said they attempted to contact the third-party insurer from the details provided by the driver of the third-party vehicle but there was no response. Further investigation by MICL found that the third-party vehicle appeared to be uninsured on the motor insurance database (MID). MICL also didn't receive a response from the third-party when it queried the insurance details.

Mr P was unhappy that MICL settled the claim on a 50/50 basis when the third-party driver had admitted liability. He didn't think it was fair to record the incident as a fault claim against him because the third-party wasn't responding and appears to be uninsured.

Our investigator didn't recommend that the complaint should be upheld. He thought MICL were entitled by the policy terms and conditions to settle the claim as they saw fit. He said that MICL had been fair and reasonable in recording the claim as a fault claim as they couldn't recover the cost they incurred in settling the claim.

Mr P disagreed with the investigator's view. He reiterated that it was unfair that he was being penalised for the third-party being uninsured.

Mr P didn't agree with the investigator's findings and so the complaint has been passed to me to 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.

In Mr P's complaint letter to this service, he said that the third-party accepted liability for the accident. Whilst he clearly didn't agree with MICL's decision on settling the claim as they did, what he is also disputing is that MICL recorded a fault claim against him due to the third-party being uninsured and also the third-party's lack of response in the matter. He says this will impact his no claims bonus even though he wasn't at fault.

This is clearly a matter of great principle to Mr P, and I appreciate he feels frustrated with the

way MICL settled the claim when he believed he wasn't at fault.

It isn't our role to decide who was responsible for causing the accident. This is the role of the courts. Instead, our role in complaints of this nature is to investigate how the insurer made the decision to settle the claim. Did they act fairly and reasonably and in line with the terms and conditions of the policy?

In the terms and conditions of Mr P's policy, MICL's ability to determine liability is included under the heading "Claims conditions". Here it says, in summary, MICL has total control to conduct, defend and settle any claim.

So, MICL is entitled, under the terms and conditions of their policy with Mr P, to take over, defend, or settle a claim as they see fit. And this means MICL can settle the claim as they feel appropriate irrespective of what Mr P said and whether Mr P agreed with the outcome or not. That means it doesn't require Mr P's knowledge or consent to decide how to settle a claim. This is a common term in motor insurance policies, and I don't find it unusual. And I think it's a reasonable term, as ultimately MICL will have to pay any settlement, so they should be able to decide how to settle.

This having been said, I would still expect MICL to act reasonably when relying on this term and properly consider the matter before proposing a settlement.

MICL said they attempted to contact the third-party insurer but there was no response. Upon doing a MID search, they could not find a third-party insurer for the vehicle in question. MICL did also attempt to contact the third-party but there was no response from them either. As a result, MICL couldn't recover the costs from the third-party insurer and so abandoned recovery and the claim was closed. MICL said they do not have CCTV footage or dash cam footage, and there are no independent witnesses to the accident. In the circumstances MICL recorded the claim liability as 50/50. Based on Mr P's version of events, both parties moved into the middle lane of the motorway at the same time which caused the collision.

The evidence that MICL had to consider was Mr P's version of events, photographs of the damage to the third-party's vehicle, as well as the damage to Mr P's vehicle. Having considered the circumstances of this incident, I think it was reasonable for MICL to conclude that as both parties were changing lanes at the same time and the impact was to the side of the vehicles, they couldn't evidence which party was at fault. I'm satisfied MICL acted in line with Mr P's policy terms and conditions and considered the available evidence when they made their decision to settle the claim on a 50/50 basis.

In any event, the third-party vehicle appears to be uninsured and so, in the circumstances, even if MICL were satisfied that the third-party was at fault for the accident, the claim would still be recorded as a fault claim against Mr P because there's no insurer for MICL to claim the cost from. I'm satisfied that MICL have acted fairly and reasonably by recording this as a fault claim and I don't require MICL to change it.

I think MICL investigated matters reasonably. Mr P may disagree with their interpretation of the evidence and their decision to settle the claim as they did and record it against him, but I don't think they exercised their discretion unfairly or unreasonably when deciding to do so.

Overall, I don't consider that MICL treated Mr P unfairly. I don't find it fair and reasonable to direct MICL to change the way they have recorded the incident or to do any more in response to this complaint.

**My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 02 August 2024.

Ankita Patel  
**Ombudsman**