

## **The complaint**

Ms K complains that following an accident involving her car, One Insurance Limited (One Insurance) hasn't recovered her policy excess and the claim is unfairly showing as her fault, under her motor insurance policy.

Ms K is represented by Mr S in her complaint. I'll refer to Ms K for ease.

## **What happened**

Ms K's car was parked next to her friend's car when another driver collided with it. The impact pushed her friend's car into hers causing damage. She contacted One Insurance and it arranged for the repairs. It also arranged for a hire car to be provided whilst this was completed.

Ms K says the police provided her with details of the driver who caused the collision. She gave this information to One Insurance. She says she's contacted the business many times for updates regarding the liability decision. On each occasion she was told One Insurance is investigating liability and that it's been in contact with the third-party's insurer (TPI).

Ms K isn't satisfied that the claim remains open as this will impact her future premiums. She also wants her policy excess refunding as she isn't at fault for the collision. In addition, Ms K says One Insurance should be claiming against her friend's insurance.

In its final complaint response dated 13 September 2023 One Insurance says it's collating evidence and trying to establish liability with the TPI. If the TPI accepts liability it says it will look to recover the costs of the claim as well as Ms K's excess fee.

In its response One Insurance says it can't provide a timeframe as this is dependent on the TPI accepting liability and paying its costs. Only when this is done can it close the claim as non-fault.

Ms K didn't think One Insurance had treated her fairly. So, she referred the matter to our service.

Our investigator didn't uphold Ms K's complaint. She says One Insurance's policy terms allow it to decide how to handle the claim. Our investigator didn't think it was unreasonable for One Insurance to pursue the insurer of the driver who caused the damage. She acknowledged Ms K's view on this, but determined it was unlikely One Insurance would successfully recover its costs from the insurer of her friend's car. This is because the friend's car was unoccupied and correctly parked. She says the damage ultimately resulted from the collision caused by the third-party driver.

Our investigator explained that Ms K's policy requires her to pay an excess fee in the event of a claim. This is an uninsured loss. She says this can be claimed back from the TPI if Ms K is determined not to be at fault. Our investigator didn't think One Insurance had treated Ms K unfairly.

Ms K disagreed and asked for an ombudsman to consider her complaint.

It 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 Ms K's complaint. I'm sorry to disappoint her but I'll explain why I think my decision is fair.

Ms K says she was satisfied with the repairs One Insurance completed on her car. As well as the provision of a hire vehicle whilst these repairs were completed. So, I needn't consider these points further.

Ms K raised a concern about mis-advice/mis-information regarding the legal cover her policy provides. Our investigator confirmed this point must be raised as a separate complaint. She explained the rules that govern our service set by the Financial Conduct Authority (FCA). Namely that a complaint must first be made to the regulated business before we can get involved. I agree with what she says. As this issue hasn't been raised with One Insurance, I can't consider it here. Ms K can of course raise this separately with the business.

Regarding the issues I can consider. I've read Ms K's policy terms, which say:

*"Your insurer will handle, defend and settle any claim."*

This is a common term used in most insurance policies. It essentially means it's up to One Insurance to decide how to settle Ms K's claim. It's the insurer that will pay the claim, so we don't think this is unreasonable. But this doesn't mean it can do anything it wants. We still expect it to treat Ms K fairly. I've looked at the evidence to determine if it did.

Ms K told One Insurance the police suspected a third party of causing the accident. She was able to provide details of the driver and his car to the business from the information the police provided. I can see that One Insurance wrote to Ms K at the end of April 2023 setting out how it would handle her claim and provided contact information. It contacted the TPI in mid-May holding its driver responsible for the claim. I can see the TPI didn't accept responsibility. It referred to the vehicle in question being a hire vehicle and asked One Insurance to prove it was liable to pay the costs from the claim.

From the claim records I can see One Insurance has continued to pursue the claim with the TPI. More recently it has also been in contact with the insurer for the car that was pushed into Ms K's car. But, as discussed, I don't think it acted unreasonably when pursuing the TPI as its driver was thought to be responsible for the collision.

I've seen emails between Ms K and the police from June 2023. The officer dealing with the matter says, *"Unfortunately I have not been able to identify any evidence to assist the investigation and the matter will now be filed, pending any new information coming to light"*. Also, in response to Ms K's query the police responded, *"All I can say is that he and his vehicle are suspected of being the ones responsible for causing the damage but at this time we have no evidence to confirm this. Your insurance company will be carrying out their own enquires [sic] independently"*.

It's clear that Ms K was frustrated with the time taken to settle this claim. I can understand her concern that the open claim was likely to have an impact on her premium at renewal. But

I can't say that One Insurance has done anything wrong here. The TPI has disputed liability. One Insurance is actively pursuing it for its costs, but it can't make the other insurer accept responsibility for the costs resulting from the collision. In cases like this when liability is in dispute, the matter can often take some time to resolve.

I'm sorry this has caused Ms K distress. But for the reasons discussed here, I can't reasonably criticise One Insurance's handling of this claim.

I've thought about Ms K's concern that she has yet to have her excess fee returned to her. Her policy terms say:

*"Excesses that apply*

*If your policy or schedule shows that you have an excess, you must pay the first part of any claim as follows:*

*A policy excess applies to your policy, of which the details are mentioned on your schedule. If you have agreed one, a voluntary excess applies in addition to the policy excess of which the details can also be found on your schedule.*

- *You are responsible for all excess payments."*

Ms K's policy schedule says she agreed to pay a total excess fee of £250. As our investigator explained this is the first part of the claim that is payable by Ms K regardless of fault. In the event that Ms K is considered not to be at fault, she can claim this amount back from the TPI. Liability has yet to be decided. Until it is Ms K won't be able to claim this back. This isn't something One Insurance can influence. I note its comments that it will claim this back on Ms K's behalf if the claim is settled in her favour. I think this is fair.

Having considered all of this I don't think One Insurance treated Ms K unfairly when relying on its policy terms and handling her claim in the way it has. So, I can't reasonably ask it to do anymore.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 12 April 2024.

Mike Waldron  
**Ombudsman**