

The complaint

Mr G complains about how his insurer, Ageas Insurance Limited (Ageas), dealt with liability for a claim made under his motor insurance policy.

References to Ageas in this decision include their agents.

What happened

In October 2022 Mr G was involved in an accident when his motorcycle collided with a third party vehicle opening a passenger door, knocking Mr G off his motorcycle. Mr G contacted Ageas to tell them about the accident and lodge a claim. From the outset, Mr G maintained the circumstances of the accident meant he wasn't at fault and the third party should be held liable for the accident.

Ageas investigated the accident, deeming Mr G's motorcycle to be a Category N total loss, offering £3,000 (less the £500 policy excess) in March 2023. Mr G elected to retain his motorcycle, which meant the settlement was reduced by £750 (the salvage value of the motorcycle). Ageas paid the net settlement of £1,750 in April 2023.

On the issue of liability for the accident, they initially concluded Mr G wasn't at fault for the accident, as they didn't have details of the third party. However, the third party disputed liability and Ageas subsequently changed their assessment to an 80:20 split of liability. They said while the third party vehicle shouldn't have opened the passenger door and hitting Mr G, the accident wouldn't have happened had Mr G not been undertaking the vehicle at the time (entering a cycle lane to do so). Ageas relied on video evidence in reaching their revised conclusion, as well as the third party saying they had a witness statement holding both parties at fault for the accident.

Mr G disputed Ageas's decision, saying he wasn't in a cycle lane and so the third party should be held completely liable for the accident. Unhappy at being held partially at fault for the accident and the time taken to assess his claim, Mr G complained to Ageas.

In their final response, issued in September 2023, Ageas partially upheld the complaint. They acknowledged while they were the insurer for both Mr G and the third party, each claim was handled separately by different departments to ensure fair representation of each party. The decision to determine an 80:20 split of liability was based on the third party shouldn't have opened the passenger door into Mr G. However, Mr G was in a cycle lane and undertaking the vehicle, which was why Mr G was deemed 20% liable for the accident. Had the matter gone to court, Ageas believed an 80:20 split of liability would have been the most probable outcome. The decision was made on a 'without prejudice' basis to ensure a personal injury claim by Mr G wasn't impacted. So, Ageas rejected Mr G's contention he had no liability for the accident.

On the length of time taken to assess the claim and determine liability, Ageas accepted there had been delays in reaching the liability decision and apologised. While they reserved the right to complete liability enquiries, they accepted their deliberation of the issue exceeded a reasonable timeframe. In recognition of this, as a gesture of goodwill, they offered £150.

Mr G then complained to this Service. He didn't accept Ageas's decision to split liability on an 80:20 basis, maintaining the third party was wholly at fault for the accident.

Our investigator didn't uphold the complaint and wouldn't be asking Ageas to do any more. She thought Ageas had sought to reach a decision on liability as quickly as possible while investigating the case thoroughly. Looking at the video evidence, Mr G did undertake the third party vehicle in front of him and entered the cycle lane to do so. However, the third party opened the passenger door into Mr G and so should be held more liable than Mr G for the accident. Had the case gone to court, it was probably liability would have been weighted towards the third party. Ageas had also acted fairly and reasonably in offering £150 compensation for distress and inconvenience to Mr G from delays in the claim process.

Mr G disagreed with the investigator's view and asked that an ombudsman review the complaint.. He said the video showed he wasn't in the cycle lane, and he wasn't undertaking the third party vehicle as it was stationary – he was filtering, which was legal.

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.

My role here is to decide whether Ageas have acted fairly towards Mr G, specifically their decision to determine liability on an 80:20 split (third party to Mr G) . It isn't to determine liability in the circumstances of the case.

The key issue in Mr G's complaint is whether Ageas acted fairly in deeming liability split 80:20 in favour of Mr G (that he was 20% liable). Mr G says he wasn't at fault for the accident, as the third party vehicle, while stationary, opened a passenger door which he was unable to avoid. He says at the time he was filtering through traffic and wasn't undertaking the vehicle (as it was stationary). Ageas maintain their decision is based on video evidence showing Mr G undertaking and entering a cycle lane to do so.

A second issue is the way Ageas handled the claim, including the time taken to settle the claim and determine liability.

On the first issue, I've looked at the information and evidence available. Ageas's final response sets out the basis for their decision to split liability on an 80:20 basis. While the third party opening the passenger door impacted Mr G, Ageas say Mr G was in a cycle lane and undertaking the vehicle.

Given its importance in Ageas's decision to split liability on an 80:20 basis, I've watched the video of the incident. The video is brief (19 seconds) and shows slow-moving traffic in which the second vehicle stops. Mr G is then seen approaching the vehicle from behind, before moving to the left, on the nearside (inside) of the vehicle. The vehicle passenger door is then opened, resulting in the collision with Mr G. Looking at it, Mr G does move inside the vehicle, which is stationary at the point he moves inside. He is moving up the inside of the vehicle when the passenger door is opened.

Mr G says he wasn't in the cycle lane but looking at the video I think it does show he crossed into the lane when moving to the inside of the vehicle. And while Mr G maintains he wasn't undertaking (as the vehicle was stationary) the fact remains he was moving up the inside of the stationary vehicle.

Given the footage, I don't think it's unreasonable of Ageas to have determined Mr G was undertaking the vehicle and moved into the nearside [cycle] lane to do so. So, I've concluded it was reasonable for them to have attributed some liability to Mr G for the accident.

The policy provides, as in standard practice in insurance cases, for Ageas to determine liability for an accident. While they initially indicated liability in favour of Mr G, the insurer of the third party vehicle then disputing liability would always have led to discussion and a decision about what would be an appropriate split of liability, even where Ageas were the insurer of both the third party vehicle and Mr G's motorcycle.

I'd also expect this consideration to include an assessment of would be the probable outcome should the case have gone to court. I can see Ageas have done this, as referenced in their final response.

So, on the basis of what I've seen, I've concluded Ageas acted fairly and reasonably in assessing the evidence and information available in reaching their decision to split liability on an 80:20 basis.

Moving to the second issue, I can see the claim assessment, including valuation and settlement of Mr G's claim for the total loss of his motorcycle as well as the decision on liability for the accident, took a considerable time from the date of the accident in October 2022. Where there are issues over valuation and liability contested, these factors are always likely to mean assessment of a claim will take longer than would otherwise be the case.

But it's clear the process took a significant length of time from the date of the accident through to the outcome of split liability, and Ageas have acknowledged this in their final response – even though I think they acted fairly and reasonably in reaching the outcome on liability. But I do think the time taken caused Mr G distress and inconvenience.

Considering this against the published guidelines from this Service about awards for distress and inconvenience, in the circumstances of this case, I think £150 compensation is fair and reasonable. As Ageas have already awarded this figure in compensation, I won't be asking them to make a further award.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 July 2024.

Paul King
Ombudsman