

The complaint

Mr C has complained about Haven Insurance Company limited. He's unhappy about the way his claim was handled under his motor insurance policy, and the liability decision that was reached.

Haven Insurance Company Limited is the motor insurer for Mr C's policy. To keep things simple, I have referred to Haven Insurance Company Limited, and its agents, as "Haven".

What happened

In December 2019, Mr C said he was driving through a junction where roadworks were being carried out. He said while driving through, a third party vehicle – which was an ambulance – collided with the rear side of his car while trying to pass. Shortly after the collision took place, Mr C said the third party driver admitted full liability. So Mr C contacted Haven to make a claim.

Haven contacted the third party's insurer in December 2019 to report the collision.

The third party's insurer responded to say that the third party vehicle had its blue lights and siren on at the time of the collision. It said the third party entered the junction and waited for other road users to proceed. It said a road user in front of Mr C had stopped to give way to the third party vehicle, and Mr C overtook this road user which caused the collision to occur.

Haven contacted the local council in attempt to obtain CCTV footage to try to establish who was more likely at fault for the accident, and to what extent. A witness was also contacted by Haven who provided a statement. Haven considered the witness' statement and put this to the third party insurer with the intention to settle the claim in full against the third party driver. But the third party insurer disputed this and requested liability should be split 50/50 based on the conflicting information.

Haven considered this and contacted the witness again, who said both parties could be considered at fault for the collision. Mr C disputed this. He said he did overtake the other road user in front of him, but the third party vehicle caused the collision and therefore, the claim should be settled in full against the third party driver. Mr C also disputed that the third party had its blue lights or siren on at the time the collision took place. As Mr C didn't agree to a 50/50 split in liability, he decided to carry out repairs to his car himself.

Mr C complained to Haven about the adequacy of its investigation into establishing who was at fault for the collision. He also raised complaint points about the overall service received, and that Haven had redacted some documents following a subject access request. As no resolution could be met, Mr C brought a complaint to this service for investigation.

Our investigator carefully considered everything, but didn't think the complaint should be upheld. She said she didn't think Haven acted unfairly by agreeing to split liability 50/50 between Mr C and the third party driver. She said the policy entitled Haven to make this decision provided it could show it had done so fairly and reasonably. And in this case, she thought it had.

Our investigator noted that Mr C also raised a complaint about receiving redacted

documents from Haven, but she didn't consider this part of Mr C's complaint and said that it would need to be raised separately. Mr C confirmed he had raised this issue with Haven already.

As Mr C remained unhappy with our investigator's opinion, he asked for an ombudsman to consider the case and make a final decision. And so, the case has now 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.

I note there's *no* dispute that the third party vehicle collided with Mr C's car while he was slowly moving forward. What is in dispute here, is whether Haven applied the policy terms reasonably, and carried out a fair investigation to determine who was most likely at fault for the collision, and to what extent. And in this case, whilst I appreciate this will disappoint Mr C as I've seen how passionately he's argued his point of view, I don't think Haven has acted unfairly or unreasonably here. I'll now explain why.

It's important to refer to the terms and conditions of the policy under section L which say that *'we are entitled to take over any third party claim against You (or any other person claiming under this policy) and to conduct the defence or settlement of any such third party claim in Your name or the name of any person claiming under this policy.'*

This means that Haven is entitled to defend or settle a claim as it sees fit. Haven doesn't need a policyholder's prior approval of any decision to admit liability, settle a claim or make a payment to a third party. Furthermore, Haven isn't obliged to take a case to court even if the policyholder would like it to do so. Haven, under the policy, is entitled to consider the evidence presented to it and also the economics of proceeding to defend a case and the potential costs and risks involved.

I'm satisfied that this is a common term across most motor insurance policies I've seen. And whilst this service agrees that this term in principle is fair and reasonable, Haven needs to demonstrate that it's applied the term in a fair and reasonable way.

I must also explain that my role here isn't to decide who I think is most likely at fault for the accident. My role is to determine whether I think Haven has carried out a fair investigation, and applied the policy terms reasonably. And, as I've said above, I think it has.

To keep things simple, I've used sub-headings below to set out what I think is most compelling here.

The CCTV footage

Where liability has been disputed, a useful way to determine what happened is to review available CCTV footage showing the collision. This service would expect an insurer to act promptly once it's notified that CCTV footage *may* be available from the scene. This is because more often than not, CCTV footage is only held for a certain period of time. I've carefully looked at whether I think Haven made reasonable attempts to retrieve CCTV footage. I can see it made contact with the local council in December 2019 when Mr C first notified it of the collision. I've seen that Haven made contact attempts with the local council on several occasions, but didn't receive any responses to its requests. Therefore, no CCTV footage was available for it to consider and pass to the third party insurer in attempt to defend the claim.

I'm satisfied based on what I've seen that Haven made reasonable attempts to retrieve CCTV footage.

The witness statement

Haven made contact with a witness that claimed they had seen the collision take place. The witness provided a statement that said the third party driver was, in their opinion, to blame for the accident. However, when this was put to the third party insurer, it pointed out that the witness was also asked '*could either party have avoided the accident?*'. The witness responded to say that both parties could've avoided the accident, which in my view means that the witness considered both Mr C and the third party driver should share some responsibility for the collision.

Haven considered this and contacted the witness to obtain further clarity about their statement. Haven took the decision to agree to split liability between Mr C and the third party driver based on this. I've looked at this, and I'm satisfied Haven took reasonable steps by providing the third party insurer with the witness statement, and seeking further clarity from the witness once the information was disputed.

Dispute about whether the third party vehicle had its siren and emergency lights on

From the information available to me, I understand there's a dispute as to whether the third party vehicle had its emergency siren and lights on at the time of the accident. Mr C disputes this was the case, whereas the third party insurer said it did. The witness that provided the statement said the third party vehicle had its siren on during the time the collision took place.

As there are conflicting versions of event, I'm satisfied it was reasonable for Haven to query this further with the third party insurer. The third party insurer provided Haven with data from the third party vehicle which shows whether the siren and emergency lights were active – and at which time. The data I've seen shows that the siren wasn't active around the time of the collision, but the emergency lights were. This conflicts with what Mr C, the witness and the third party insurer has said.

Given there are conflicting versions of events here, and vehicle data that doesn't match up with what either party involved has said – including the witness – Haven decided that a 50/50 liability split was the most appropriate way to settle the claim. I don't think that's unreasonable here given the conflicting information from Mr C, the witness and the third party insurer.

Incorrect information provided by the third party driver

Mr C also said that he thought the third party driver had provided the incorrect registration plate in order to impact the fairness of the claim. I appreciate Mr C's concerns here, but on balance, I haven't seen that this had any bearing on the outcome of the claim. Mr C provided clear photos showing the correct registration plate of the third party vehicle, which Haven used to start the claims process with the third party insurer.

Overall, and to summarise, I'm not in agreement with Mr C that Haven has treated him unfairly here, or failed to carry out a fair investigation based on all the information presented to it by both him and the third party insurer. Haven is entitled under the policy to investigate the claim and decide whether to defend or settle it. Therefore, on balance, I'm satisfied it took reasonable steps to investigate Mr C's arguments.

I note Mr C did raise a complaint about the information he received from Haven. Mr C said most of the information he received was redacted. Mr C did raise this complaint with Haven and it said it sent him a final response letter. Mr C would need to bring a new complaint to this service, as this isn't something I've considered as part of this complaint.

My final decision

For the reasons set out above, my final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 24 August 2020.

Liam Hickey
Ombudsman