

The complaint

Mr T complains, on behalf of his company which I'll refer to as G, about Zenith Insurance PLC's handling of a claim against G's commercial fleet insurance policy.

G's policy is underwritten by Zenith. So Zenith remains responsible for all matters to do with claims. Other companies have handled matters on Zenith's behalf, but, as those companies were acting for Zenith while doing so, for ease of reading, I will only refer to Zenith in this decision.

What happened

One of G's vans was in an accident when exiting a large roundabout which links some major roads and motorways. Mr T doesn't believe G's driver was at fault for the accident. But as there was only minor damage, G didn't claim for the damage to its own van. However, the driver of the other car, the third party, made a claim against G's policy. Zenith agreed to settle the third party's claim.

Mr T complained on G's behalf about Zenith's decision to settle the claim, particularly as that would affect G's future insurance premiums. Zenith reviewed matters. It acknowledged that it had accepted the third party's claim prematurely. And it said it could have done more to chase a response from a witness. So it paid G £200 compensation.

Mr T didn't think that went far enough and brought G's complaint to us. One of our investigators looked into it. He didn't think Zenith needed to take any further action. Mr T didn't agree so G's complaint 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 going to instruct Zenith to take any further action.

I understand that, as far as G is concerned, the third party was in the wrong lane. That's because she was in the inside lane of the roundabout but continued to drive past the exit G's driver was heading for from the middle lane. G believes that the third party should have been in the middle lane if she was continuing past the exit. So G's argument is that the third party wasn't obeying the guidance in the Highway Code and so was solely to blame for the accident.

While I have some sympathy with that position that doesn't mean that Zenith needs to take any further action. I need to make clear that it's not my role to decide who's at fault for an accident. Nor is it my role to decide whether any rules of the road have been breached. And, like all motor policies, G's policy allows Zenith to settle claims as it sees fit. That means it doesn't require Mr T's consent to decide how to settle a claim and it may make a decision that he doesn't agree with. But I'll look to see whether or not it's done so reasonably.

When reporting the incident to Zenith Mr T made G aware that there was a witness who would support G's driver's version of events. Zenith did send a witness statement form to the witness. But he didn't initially return it. Zenith later accepted liability for the accident on G's behalf. After receiving G's complaint, Zenith reviewed the matter. By then the broker had provided the witness' statement which supported G's driver's version of events. At that point Zenith acknowledged that it should have done more to chase the witness for his statement. It also accepted that it had acted prematurely in accepting liability as early as it did. But it didn't think that helped G's position.

The third party registered her claim against G's policy by following an accepted protocol for pursuing personal injury claims. Responses to claims made in that manner have time-limits associated with them. And, by the time that Zenith received the witness' statement from the broker that time-limit had already expired and Zenith had accepted liability. It couldn't then withdraw its liability acceptance. But I'm not persuaded things would have gone G's way even if Zenith had ensured it had received the witness statement before accepting liability.

That's because, as far as I can tell, the circumstances for the claim don't appear to be disputed. That is G's driver accepted that they were turning off the roundabout from the middle lane and crossing the inside lane, where G's van and the third party's car came together. The witness statement agrees that's what happened, and while the witness blamed the third party for the accident, it's not up to the witness to decide who's liable for it. So the issue here is who is it fair to say was at fault in these circumstances, the dispute wasn't about how the accident happened.

Zenith was clearly concerned that in crossing the inside lane which is where the third party was at the time, G's driver had caused a collision. And, from Zenith's perspective, G's driver was always going to be held – at least partially – to blame for that action. That's because if G's driver hadn't driven across the inside lane, it's likely the accident wouldn't have happened. I understand Mr T doesn't agree with that view but in the circumstances I think it's reasonable.

When it reviewed its handling of the incident Zenith acknowledged that, potentially, it could have tried to defend the claim. But given that it felt G's driver was always going to be held partially to blame, it thought the absolute best it would be able to achieve would be a 50/50 split liability decision. And while it was too late to pursue that, it wouldn't have been of help to G.

That's because, for insurance purposes, any claim that results in the policyholder being held in anyway liable, is considered the same as being 100% to blame. So a 50/50 decision would have the same effect on G's insurance history as a liability decision holding G's driver 100% to blame. So, even if Zenith had done more to chase the witness for his statement or offered a 50/50 split liability settlement G's position wouldn't have changed.

I'm aware that Mr T feels that no blame should be attributable to G. But, Zenith has experience of dealing with such matters. And, while it's acknowledged it didn't get everything right, I think it's view that G's driver was always likely to share some of the blame is reasonable. And I don't think Zenith would have offered to settle a claim it thought it had a reasonable prospect of defending successfully.

My final decision

For the reasons set out above I'm not going to instruct Zenith to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 22 March 2022.

Joe Scott
Ombudsman