DRN-3421654

The complaint

Mr and Mrs J have complained that U K Insurance Limited unreasonably held them responsible for causing damage to another driver's car under their motor policy.

What happened

An incident occurred in a carpark in June 2020 between Mr and Mrs J and another car. Mr and Mrs J said they had parked beside this car and when Mr J got out of the car, the person in the car beside accused him of damaging the door of his car. Mr and Mrs J were adamant there was no damage.

Three months later this other driver made a claim on Mr and Mrs J's policy to UKI. UKI decided without examining Mr and Mrs J's car to pay the other driver's claim. This meant Mr and Mrs J's premium has been affected and will be affected for five years. So, Mr and Mrs J complained.

UKI was of the view that since its engineer decided it probably happened as the other driver said, UKI should pay the claim. But because Mr and Mrs J's car was never inspected it offered them £100 compensation.

Mr and Mrs J remained dissatisfied and brought their complaint to us. The investigator didn't think UKI had done anything wrong. Mr and Mrs J disagreed so their complaint was passed to me to decide.

I issued a provisional decision on 24 March 2022 and I said the following:

> 'As the investigator explained our role in complaints like this, is not to decide who was or wasn't liable for causing an accident or incident, as that can only be decided by the courts and this service is not a court of law, merely instead an informal dispute resolution service.
>
> But we look to see if the insurer, UKI here, came to its decision to hold Mr and Mrs J responsible for this other driver's damage, reasonably and I don't consider UKI did. It admits it should have examined Mr and Mrs J's car and it didn't and it decided that was worth £100 compensation. However, in my view it has singularly failed to show that the other driver's account was reasonable, or indeed true. And it failed to notice even on photographs any evidence of consequent damage to Mr and Mrs J's car. The engineer talks of a paint transfer from the roughly the same car colour as Mr and Mrs J's to the other driver's car but if such a paint transfer occurred as he said, I consider there would have to a mark at least on Mr and Mrs J's car and there isn't. Not from the photographs I have seen.
>
> Other than an Audatex report of the damage to the other driver's car, there is no further evidence of any interrogation of the other driver's account of what happened. I've read UKI's files carefully and in investigating Mr and Mrs J's complaint, it notes that the engineer never confirmed Mr and Mrs J's car caused the damage at the time

it settled this other driver's claim. Further it clearly said in its file on 16 November 2021 '*refer to TL as unsure where to go from here. Clearly no damage on PHV [Mr and Mrs J's car]'.*

So, it asked the original inhouse engineer a series of questions concerning why the other driver's claim was dealt with, what information was reviewed and what was the outcome and what did the engineer think of photos of Mr and Mrs J's car? The engineer felt the damage to the other driver's car was consistent with a car door opening on it. And confirmed no one asked for Mr and Mrs J's car to be examined. Generally, the answers seemed to indicate that a claims handler decided Mr and Mrs J were responsible. because the damage was consistent with a car door opening and it should be dealing with the other driver's complaint and the activity was all completed without any response. He also declined to answer whether any review of the claim changed on looking at the photos of Mr and Mrs J's car by writing n/a next to the question number.

I consider that if the other driver's damage was consistent with a car door opening then the next stage is to show that it was Mr and Mrs J's car door that did the damage. There really is no evidence to show this was the case, because there is no evidence of a paint transfer from Mr and Mrs J's car because there is no damage to Mr and Mrs J's car, from the photos and Mr and Mrs J's car was never examined.

The complaints hander in UKI went back to the engineer for a second time and asked if the correct process was followed given no one asked him to inspect Mr and Mrs J's car. He was also asked to look at the photos of Mr and Mrs J's car again. His response was that the other driver's damage was certainly due to a car door being opened into it. The other driver's car shows a paint transfer of grey/brown. Given Mr and Mrs J's car is grey that pointed to it being caused by their car. However, without any damage on Mr and Mrs J's car, the flow of causation is far too remote to come to that conclusion in my view. Mr and Mrs J's car is grey (no brown anywhere), the claim made by the other driver was three months after the alleged incident in the carpark. Any other grey/brown car could have caused this damage to the other driver's car, and without some evidence showing at least something correlating on Mr and Mrs J's car (which was never inspected anyhow) the conclusion that it had to be have Mr and Mrs J's car that caused the damage is simply irrational in my view. The engineering evidence therefore doesn't show a causation link or a connection between the damage to the other driver's car and it being caused by Mr and Mrs J's car.

I don't consider it's enough or indeed fair and reasonable to simply rely on this altercation in a car park some three months before. There's no evidence to show me that if UKI had resisted this claim from the other driver, that there was any likelihood it wouldn't been successful in defending it, given the lack of evidence of any damage to Mr and Mrs J's car. So, whilst UKI has every right to take over and defend any claim against Mr and Mrs J under the policy terms, it must do this reasonably. I don't consider given all of the above, more so given the further enquiries the complaints adviser made to the engineer that it has done this reasonably here.

So, I consider it should remove this incidence against Mr and Mrs J's record on the Claims and Underwriting Exchange (CUE). That should mean Mr and Mrs J's present and subsequent insurers should be able to repay any additional premium they charged due to this incident. If that doesn't occur for any reason, I expect UKI to refund the difference with interest. UKI should also write a letter to Mr and Mrs J confirming this for them to show any subsequent insurer for so long as they have to declare this incident, which they will have to do.'

> UKI paid Mr and Mrs J £100 compensation for not inspecting their car. That can't justify the extent of the lack of investigation into this claim, and the consequent distress and upset caused to Mr and Mrs J so I consider UKI should pay a further £200 compensation for the distress and upset it caused them.'

Mr and Mrs J said that the only time the engineer referred to the pain being on the other driver's car, to them, was when they confirmed there was no paint on their car. They also said they didn't believe the engineer inspected the other's party's car before it went into the spray booth.

Unsurprisingly UKI didn't agree with my provisional decision. It said the following:

- Mrs J has confirmed there was an incident in the place the alleged incident occurred but that no damage was caused. Therefore, for accurate records it didn't think the incident could be removed from CUE, as the incident did occur.
- The incident occurred on 16 June 2021, but Mrs J didn't report it. The first notification came from the other driver on 11 July 2021. The other driver could have argued Mrs J had any required minor repairs done. It stressed it's not that it doesn't believe no damage was caused, it's a matter of proving it.
- Because Mrs J confirmed they were at the location, it would be hard to argue they were not responsible for causing it, partly because they hadn't reported it as UKI could have asked for photographs then or inspected the car. So it now believes having her car inspected wouldn't have changed the outcome.
- It's for unusual for us to say we should refund what other insurers have charged Mr and Mrs J for the incident as that's the responsibility of those other insurers. And if they don't another complaint should be lodged with them.
- If the final decision remains that the wrong decision was made by our claims department then the incident will have to remain on CUE but as non-fault claim with the No Claims Discount (NCD) allowed.

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 again, I remain of the view that UKI's decision to pay the other driver's claim on the basis of the lack of coherent evidence wasn't a reasonable one. For all the reasons I detailed in my provisional decision above.

I also feel it necessary to point out that the incident occurred in June 2020 as both Mr and Mrs J said in their complaint form and also by the analysis given by the complaint's handler on 15 November 2021 at 10:46 AM as follows from UKI's file:

> *'20/07 – first contact from PH, disputes any damage*
> *22/07 – images requested from TPI*
> *25/09 – chased images*
> *26/10 – we told PH we would be closing claim info only*
> *03/11 – PH aked for letter confirming info only*
> *27/11 – we updated with S&S directly that claim was closed info only*
> *06/02 – we advised PH of TPI claim and images supplied*
> *09/02 – sent images of TPV damage to PH*
> *24/02 – ENG confirms damage on TPV is consistent with a door being opened however cannot see damage on PHV from image supplied*

25/02 – we advised PH we will be dealing with TP claim, PH disputed and we allowed 14 days for PH to gather evidence
12/03 – we paid TP's claim as no response from PH'

So UKI were wrong to say to in the response to the provisional decision that it happened in June 2021. UKI appear to have forgotten they had initially told Mr and Mrs J this matter would be closed but simply noted for information only back in November 2020, also. Consequently this matter has been ongoing for Mr and Mrs J for some considerable time, with Mr and Mrs J alleging on their complaint form that UKI didn't tell them when it had settled the other driver's claim as that was discovered on their application to a new insurer. On that basis, its response to my provisional decision doesn't make much sense. However, I do note that the incident does indeed have to stay on CUE, but it should be noted as non-fault with the NCD allowed.

Turning to the last point about the reimbursement by Mr and Mrs J's subsequent insurers. It's very unlikely those insurers won't reimburse Mr and Mrs J but in the unlikely event any of them don't, given the cause of the increase was UKI's fault I consider it's fair for UKI to then deal with such refund issues, since it caused them.

My final decision

So, for these reasons, it's my final decision that I uphold this complaint.

I now require U K Insurance Limited to do the following:

- Amend the incident from CUE and all internal and external databases to show that it's non-fault with the NCD allowed.
- In the very unlikely event, should Mr and Mrs J's subsequent insurers be unable to refund the difference in the extra premium charged for this incident, UKI should do so instead, adding interest of 8% simple from the time Mr and Mrs J paid any increased to the time of its refund. If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr and Mrs J for HMRC purposes.
- Pay Mr and Mrs J a total of £300 compensation including the £100 previously offered for the distress and inconvenience caused by its failure in properly investigating the other driver's claim against them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 9 May 2022.

Rona Doyle
Ombudsman