DRN-3489024

The complaint

Mr C complains that U K Insurance Limited ('UKI') wrongly held him partly at fault for an accident after he made a claim on his motor insurance policy.

What happened

Mr C said he'd reversed off his driveway and was fully established on the road when a car driven by someone leaving the house opposite his reversed off its driveway into his lane. The impact was to the front passenger-side door of the other car and to the corner of the driver's-side rear bumper of Mr C's car. The other driver said she'd reversed onto Mr C's side of the road and had straightened her car up when his car reversed into the side of it. Initially, UKI held Mr C fully at fault. Later on it said liability should be split, as there was no independent evidence - which the other insurer accepted.

When one of our investigators reviewed Mr C's complaint, she noted that UKI initially thought the two driveways were directly opposite one another, and that the other driver was further along in her manoeuvre than Mr C was. She thought UKI had acted reasonably in deciding later on that liability should be split, based on the evidence it had.

Mr C said once it was accepted that the two driveways weren't opposite one another, it was obvious that the other driver had misled her insurer and UKI, as her version of events wasn't possible. He said UKI should have carried out more work before making its decision. As there was no agreement, the complaint was passed to me for review. I issued a provisional decision, upholding Mr C's complaint, along the following lines:

- The policy gives UKI the right to settle any claim as it sees fit. We don't decide which party is to blame for an accident. We only look at whether an insurer acted reasonably in making its decision, by looking at all the evidence and reaching a fair conclusion based on it. Without independent evidence, it's often hard for an insurer to say which party was at fault, as both versions of events may be plausible. If so, splitting liability may be the fairest outcome.
- In this case, I looked at satellite images of the location, plus all the evidence on the file. I could see why Mr C thought UKI couldn't reasonably have concluded that the other driver's version of events was plausible. Her driveway is further down the road from Mr C's drive, on the opposite side, and she reversed to her right, putting her car even further away from his driveway. She said she'd straightened up her car after reversing it and was facing forward, on Mr C's side of the road, when he reversed into the side of her car.
- I thought the satellite view showed that the other driver's car would have been lined up with Mr C's neighbour's garden if that account was correct. I thought his car couldn't have hit the side of hers, based on the location of the driveways and the position of the damage done to each car - if her car was where she said it was at the point of impact. So I could see why Mr C thought UKI should have challenged her account. If it could be shown to be wrong, then both insurers would have had to consider what probably happened, based on the rest of the evidence.

- Mr C's account was that his car was straight, facing forward on the road, when the other driver's car suddenly came into view, just before the collision, and that her car was straddling two lanes and was positioned diagonally across the road. I thought his account was credible, given the position of the driveways and the location of the damage to the cars, especially without a plausible alternative account.
- I didn't think it was clear that UKI had challenged the other driver's account, when as far as I could see, it made no sense. I thought in proposing split liability, UKI had in effect accepted that both accounts of events were plausible, when the other driver's version wasn't in line with the physical evidence at all. I thought it was possible that had UKI challenged her account (explaining why it couldn't be correct) the other insurer may have accepted full liability. If it hadn't, UKI would have had to consider whether legal proceedings were appropriate. But as UKI didn't argue the merits of Mr C's account, the other insurer didn't have to address the problems in the other driver's account or decide whether to change its stance.
- I said Mr C's premium at renewal was likely to have risen partly because of the fault claim on his record. To put matters right, I proposed that UKI should change the record on databases to show the claim as non-fault, with his NCD allowed. I thought it should calculate what the premium would have been with a non-fault claim and refund the balance to Mr C, with interest, and pay him £100 compensation.
- Mr C accepted the provisional decision, but he said that (as UKI thought he was at fault for the accident) he had to pay £100 for an upgrade to the standard courtesy car he was given. UKI said had Mr C's car not been moving at the point of impact, there would be scraping along the other driver's door, as it went past his stationary car. It said both cars must still have been reversing. UKI said had it challenged the other insurer, it didn't think it could have avoided liability completely, since Mr C had a duty to look behind him. It also said had the other insurer rejected the 50:50 split, it would not have defended the matter, as it thought a court was unlikely to find in its favour.

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.

As far as I can see, Mr C hasn't raised the issue of having to pay for a superior courtesy car with UKI. As it hasn't had a chance to consider the issue, I can't address it here. And I don't think UKI has commented previously on the dent in the door of the other driver's car, and the lack of scraping along it. So I can't be sure that the *type* of damage to it was the reason for not challenging the other driver's version of events.

What's certain is that UKI didn't refer to that issue in its final response letter. Instead, UKI said the dent supported the other driver's account, *as it showed she was further through her manoeuvre than Mr C at the point of impact*. It said her account was that she'd finished her manoeuvre and was about to drive off ,when the corner of Mr C's rear bumper hit the side of hers. As I said in my provisional decision, that version of events can't be correct, given the location of the driveways, so I can't see why UKI thinks the dent supports her account.
I think the only way to get a dent in the front passenger side door (if the other driver's account is correct) would have been for Mr C to reverse into it from her left. He'd have had to do so at an acute angle, too – possibly driving backwards through his neighbour's garden – in order to hit her car with the *driver's side* corner of his bumper.

I don't think UKI reached the point where it would have had to argue with the other insurer about why there was a dent - and not a scrape – on the other car's door. And I think there may be other possible explanations for that. For example, if Mr C's car was stationary, and

the other driver saw it at the last minute and braked, the impact could have happened when her car had just about stopped moving. But I don't think that's the central issue here.

I remain of the view that UKI should have challenged the other driver's version of events strenuously, as it made no sense, given the position of the driveways and the location of the damage to each car. The other insurer may have accepted that her version wasn't credible, had UKI explained to it why that was the case. I appreciate that had it *not* accepted full liability, UKI would then have had to consider whether there was a fair prospect of success should it take legal action. Depending on the strength of the other insurer's arguments, UKI may have made a reasonable decision not to take the matter to court. But it would then have been in a position to explain its decision to Mr C, who may have accepted it.

In my opinion, the main point is that it wasn't reasonable for UKI not to challenge the other driver's version of events when it wasn't credible. It isn't possible to say with certainty what would have happened had it done so. I think there's a fair chance that Mr C wouldn't have been held at fault - but the opportunity to find out was lost. As UKI's decision led to consequences for Mr C, including extra expense, plus inconvenience and disappointment, I think it should put matters right, as proposed in my provisional decision.

My final decision

My final decision is that I uphold this complaint. I require U K Insurance Limited to do the following:

- Change the records on databases, including CUE (the Claims and Underwriting Exchange) to show a non-fault claim for Mr C, with NCD allowed
- Calculate the renewal premium Mr C would have been charged with a non-fault claim on his record and refund the difference to him
- Add interest to the sum above, at the simple yearly rate of 8%, from the date of payment to the date of settlement. If UKI thinks it's required by HM Revenue and Customs to withhold income tax from the interest, it should tell Mr C how much it has taken off and provide a tax deduction certificate if required
- Pay Mr C £100 compensation for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 June 2022.
Susan Ewins
Ombudsman