

## **The complaint**

Mr M complains that Haven Insurance Company Limited mishandled a claim on his motor insurance policy.

Where I refer to Haven, I include claims-handlers and others insofar as I hold Haven responsible for their acts or omissions.

## **What happened**

For the year from late June 2020 to late June 2021, Mr M had his car insured on a comprehensive policy with Haven. The premium was about £2,500.00.

Unfortunately, in October 2020, Mr M's car and a third party's larger vehicle were involved in a collision on a roundabout.

In early December 2020, Haven paid for repair of Mr M's damaged car. Haven sought to recover its outlay from the third party or their insurer.

By mid-December 2020, Mr M had instructed solicitors to seek compensation from the third party for a whiplash injury. A doctor had examined him and provided a report.

In mid-March 2021, Haven told Mr M that it was disputing liability as the third party's CCTV showed that Mr M hadn't moved out of his lane.

Haven agreed a settlement on the basis of liability split 70/30 between Mr M and the third party.

In late June 2022, the solicitors said that Mr M's injury was worth £2,600.00 to £3,000.00 but (based on 30% liability) the third party's insurer had offered £870.00. Mr M accepted that and the solicitors deducted costs of about £470.00 and sent Mr M the balance of about £400.00.

For the year from late June 2022, Mr M agreed to pay a premium of about £2,900.00 plus interest for payment by instalments.

Mr M complained to Haven that it had split liability without telling him or his solicitor. By a final response dated mid-July 2022, Haven turned down the complaint about its decision on liability but upheld the complaint that it hadn't told Mr M.

Mr M brought his complaint to us in late July 2022.

Our investigator recommended that the complaint should be upheld in part. He didn't think that Haven had fairly considered the impact its poor communication had on Mr M. The investigator recommended that Haven should pay Mr M £300.00 to apologise for the trouble and inconvenience this had caused him.

Haven agreed with the investigator's opinion.

Mr M disagreed with the investigator's opinion. He asked for an ombudsman to review the complaint. He says, in summary, that:

- Haven's bad communication caused him financial loss.
- £300.00 isn't enough compensation.

### **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.

Where an insurer has made an outlay on a claim, it will usually treat the claim as a fault claim against its policyholder unless and until it recovers that outlay in full, typically from a third party. Split liability will result in recovery of only part of its outlay.

Most motor policies allow the insurer to decide how best to settle a claim against a third party. Haven's policy terms included the following:

*"Conduct of claims/subrogation*

*...We will have full control over any legal proceedings brought against a third party... Where We consider it appropriate. We may admit liability on Your behalf... We have full control of all claims covered by this policy.*

*... We may, at Our expense, bring a claim in Your name ...to recover any costs incurred by Us...."*

I consider that the effect of that term was that – on a question of the third party's liability to Mr M for damage to his car– Haven's view would prevail over Mr M's view. But I will consider whether Haven applied that term fairly.

Mr M regarded the third party as 100% responsible for the accident causing damage to his car and injury to him. His injury was worth up to £3,000.00 in damages. But that was some way from being money in the bank.

In order to get any compensation from the third party, Mr M would have to persuade the third party to pay or persuade a court to direct the third party to pay. He instructed solicitors to work on such a claim. According to the later invoice, Mr M agreed to pay a fee capped at 25% of damages recovered and a premium for after the event ("ATE") legal expenses insurance.

I accept that by mid-March 2021, Haven had viewed the third party's CCTV and didn't consider that Mr M had been at fault. However, the third party's insurer referred to a rule of the Highway Code requiring drivers approaching a larger vehicle to allow extra space for it to manoeuvre.

Haven decided that – rather than incur the cost and risk of court proceedings to recover all its outlay – it would accept 30% from the third party. Whilst Mr M doesn't agree with that settlement, I consider that it was allowed by the policy terms, and not unreasonable in the circumstances.

Haven should've told Mr M or his solicitors promptly. But I don't think that would've changed its decision.

In any event, I consider it far from certain that Mr M would've persuaded the third party insurers or a court that the third party was 100% liable for his injury. He would've faced the same point about the Highway Code.

Compared to the premium before his claim in 2020, Haven asked Mr M to pay an increased premium in 2022. I consider that Haven was entitled to do so. Mr M was free to shop around for a better deal.

So I don't uphold Mr M's complaint that Haven caused him a financial loss.

### **Putting things right**

I don't doubt that – when he found out about Haven's decision – Mr M suffered some upset and inconvenience in dealing with Haven and his solicitors. I agree with the investigator that £300.00 is fair and reasonable compensation for this.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Haven Insurance Company Limited to pay Mr M £300.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 January 2023.

Christopher Gilbert  
**Ombudsman**