

## **The complaint**

Miss G complains about Haven Insurance Company Limited and the way they handled the claim she made, following damage to her car while it was parked.

## **What happened**

Miss G held a motor insurance policy, underwritten by Haven. Unfortunately, in early November, Miss G returned to her car, parked in a public car park, to find it had been damaged. And Miss G believed this damage had been caused by a third-party car, parked directly next to her. So, she contacted Haven to make a claim.

Miss G wanted to make a non-fault claim, as she felt the damage had been caused by the third-party. And Miss G made Haven aware that CCTV footage of the incident should be available from a fast-food retail outlet, who I'll refer to as "B" and a gym, who I'll refer to as "T".

Haven processed Miss G's claim, requesting CCTV footage from B while also contacting the third-party insurer (TPI). But the TPI disputed Miss G's claim, explaining their insured disputed causing any damage to Miss G's car. And they provided images they felt showed damage was present on Miss G's car before the time of the alleged incident.

Haven continued to engage with the TPI, and chase B for footage. But no footage was provided and so, without any evidence to support Miss G's version of events, Haven didn't think they were able to claim against the TPI, without Miss G agreeing to claim through her own insurance policy. And Miss G didn't want to do this, as the applicable excess was more than the estimated repair cost. So, Haven closed the claim down as notification only.

Miss G was unhappy about this, so she made a complaint. Miss G was unhappy with the way Haven handled the claim. In particular, she was unhappy that Haven had failed to request CCTV footage from T. And that due to the time that elapsed, this footage was no longer available. Miss G felt this footage would've proven her version of events and allowed a claim to be raised against the TPI, at no cost to herself. So, Miss G wanted Haven to cover the costs she incurred repairing her car and allow her to switch to another policy at no cost to herself.

Haven responded to the complaint and didn't uphold it. They thought they had processed Miss G's claim fairly. And they explained that they were unable to issue legal proceedings to recover costs from the TPI unless Miss G agreed to claim on her own insurance policy, which she had been reluctant to do. So, Haven set out the options available to Miss G moving forwards. And they didn't offer to do anything more. Miss G remained unhappy with this response, so she referred her complaint to us.

Our investigator looked into the complaint and upheld it. They thought Haven had failed to request CCTV footage from T within a reasonable amount of time. And because of this delay, the footage was no longer available. So, our investigator thought Miss G had lost the opportunity to potentially rely on this footage to support her claim and prove liability. But our investigator explained it couldn't be known for certain what this footage would've shown, and

what impact it would've had on Miss G's claim. So, to recognise the error Haven made, our investigator thought Haven should pay Miss G £150.

Haven accepted this recommendation. But Miss G didn't. She provided several comments, which included and are not limited to her belief, referring to legal wording, that the footage would've been provided by T. And she thought that, as this footage may have shown the incident and proven liability, Haven should cover the costs she'd incurred as if this had been the case, she wouldn't have needed to pay for the repairs herself.

Our investigator responded to these comments, explaining our service was unable to assume the footage would've shown the incident and supported Miss G's version of events. So, to remain impartial, our investigator reaffirmed their recommendation that Haven should pay Miss G £150 as their delay led to the footage no longer being available. Miss G remained unhappy with this recommendation and so, the complaint has been passed to me for a decision.

### **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 upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

I recognise Miss G feels strongly that the damage to her car was caused by the third-party. So, I understand why Miss G feels it's unfair that she's been left in a situation where she's needed to pay the costs of the repairs, when the damage happened through no fault of her own.

I also recognise Miss G believes the incident itself should've been caught on CCTV around the car park her car was parked, and so I can understand why Miss G feels as though Haven are responsible for the costs she's incurred, as this footage wasn't obtained and able to be used to prove liability.

In this situation, I've seen Haven did contact B requesting CCTV footage of the incident the day after they were notified of the claim. And I've seen B's response to this request, confirming no footage showing the incident was able to be found. So, I'm satisfied Haven did all they can to obtain footage from B and I don't hold them responsible for the fact no footage was found. While I appreciate Miss G's assertions footage should've been available from B, and I've seen the image she showed highlighting the location of the camera in relation to the parked space, there are several reasons why B may have been unable to obtain this footage. And I don't think Haven were able to control the actions of B, or the footage they recorded. So, I think Haven acted fairly here.

But it's accepted that Haven didn't contact T to obtain the CCTV footage they may have recorded until some months after the incident. And I've seen an email from T, which confirmed if any footage had been recorded of the incident, this was no longer recoverable due to the time that elapsed and how long they kept recordings for. So, based on this, I think it's reasonable for me to assume that, had Haven contacted T straight after they received notification of the claim like they did with B, they would likely have been provided with CCTV footage had any recording of the incident been available.

So, I'm satisfied that Haven's failure to request this footage from T within a timely manner

has resulted in Miss G losing the opportunity for any footage to be considered when a decision on liability was being made. And due to this, I'm satisfied Haven's actions were unfair and unreasonable, potentially impacting the settlement of Miss G's claim. As I think Haven acted unfairly here, I've then thought about what I think Haven should do to put things right.

### **Putting things right**

Any award or direction I make is intended to place Miss G back in the position she would've been in, had Haven acted fairly in the first place. Crucially, any award or direction isn't intended to place Miss G in a position of betterment, as we are an independent and impartial service that must act fairly to both Miss G and Haven.

In this situation, had Haven acted fairly, I think they would've requested the CCTV footage from T sooner. And, if any footage of the incident was available, I think it would've been provided. So, I do think Miss G has lost the opportunity for this footage, if available, to be considered as part of her claim. And I think the realisation of this would've been upsetting and frustrating for Miss G, especially considering how strongly she felt regarding the situation and the liability.

But as this footage hasn't been obtained, I'm unable to speculate on what the footage would've shown. So, I'm unable to speculate, or say for certain, that the footage would've shown the incident, or that the third-party was the one responsible for the damage caused to Miss G's car.

If I was to assume the footage would've shown this and directed Haven to do something based on this assumption, and the footage would've in fact not shown the incident as Miss G believes happened, then I would be placing Miss G in a position of betterment. And as I've explained, this is something neither I, nor our service, is able to do within the rules set by the industry regulator, the Financial Conduct Authority.

So, I'm unable to say for certain that the footage would've confirmed the third-party was liable for the damage. And I can't say for certain that Haven would've been able to settle the claim on a non-fault basis, at no cost to Miss G. Because of this, I don't think it would be fair for me to say Haven should cover the costs of the repairs to Miss G's car.

Our investigator recommended Haven pay Miss G £150 to recognise the upset she would've felt when she realised she had lost the opportunity for this footage to potentially be considered as part of the claim process. I note Haven have acted this recommendation. And this recommendation is one that falls in line with our service's standard approach and what I would've directed, had it not already been made.

I think it fairly recognises the emotional impact caused to Miss G, and her loss of opportunity. But I think it also fairly reflects the fact that there is no guarantee the footage would've proven liability. I think it also fairly acknowledges that Haven did offer Miss G the opportunity to pursue the claim through her own insurance policy, which I would expect them to do. I appreciate Miss G chose not to do so, as her excess on the policy would've been applicable and this was more than the repair costs. I understand why Miss G chose this course of action, but that was her own decision to make.

So, I think Haven should pay Miss G £150 to fairly resolve the complaint.

### **My final decision**

For the reasons outlined above, I uphold Miss G's complaint about Haven Insurance Company Limited and I direct them to take the following action:

- Pay Miss G £150 to recognise her loss of the opportunity caused by their error, and the upset and frustration this caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 21 June 2023.

Josh Haskey  
**Ombudsman**