

The complaint

Mr K complains about how West Bay Insurance Plc trading as Zenith Insurance (Zenith) dealt with a claim on his motor insurance. References to Zenith include other organisations and individuals acting on its behalf.

What happened

Mr K had motor insurance with Zenith. He was involved in an accident where another car collided with the back of his car. Some time after the accident Zenith sent Mr K a letter saying:

"Please be advised the above claim was settled as non fault.

We allowed the no claims bonus decision."

A few days later Zenith sent Mr K another letter saying:

"Your no claims bonus has been Disallowed.

We apologise that the correspondence sent to you previously was incorrect, this was an error.

We have had to give the third party claim some consideration under your policy.

You have reported to us that the third party hit you in the rear however, the third party alleged that you changed lanes in front of them.

Due to the conflicting version of events, and lack of evidence on either side to confirm which version of events is correct, we determined liability would need to be agreed on a 50/50 basis, which means both parties are help [sic] equally at fault for the incident.

We appreciate this was not the outcome you were hoping to achieve in respect of this incident, but we trust the above sets out why we have been unable to fully defend liability on this occasion."

Mr K says he never received this letter and didn't know there had been a change to Zenith's decision about liability until he went to take out other insurance some time later.

Mr K complained to Zenith. Zenith said its claims team weren't proactive in chasing the documents requested from the third-party insurer and the letter it issued regarding the claim settling as non-fault shouldn't have been issued whilst investigations weren't completed. Zenith apologised for any confusion this caused and agreed to allow Mr K's no claims bonus.

There were some other customer service issues with the handling of the claim and Mr K's subsequent complaint which Zenith also apologised for, and it awarded Mr K £200 compensation.

Mr K wasn't happy with Zenith's response so he complained to this service. Our investigator

didn't uphold the complaint. He didn't think it was unreasonable that Zenith accepted 50/50 split liability having considered the chances of success if the case went to court.

Our investigator said the only impact on Mr K was initially being told incorrect information, and he thought Zenith's offer of £200 compensation along with allowing Mr K to keep his no claims bonus was fair and reasonable.

Mr K wasn't happy with what the investigator said so his complaint has been passed to me. Mr K wants his insurance record updated and the marker placed there removed, some compensation for the increase of premiums he has had to pay for insurance and compensation for the stress/anxiety this has caused.

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.

I don't uphold Mr K's complaint. I'll explain why.

Mr K's insurance policy documents said:

"We shall be entitled to take over and conduct the defence or settlement of any claim or prosecute any claim in the name of any person covered by this insurance.

...We shall have discretion in the conduct of any proceedings or in the settlement of any claim."

This means that it is Zenith's decision whether to pay a claim made against their insured.

My role isn't to decide who was at fault in the accident Mr K had. My role is to decide if Zenith acted fairly and reasonably in dealing with the claim from the other driver.

It isn't in dispute that a collision did occur. The two parties had very different explanations of what happened and there were no other witnesses or evidence such as CCTV or dashcam footage made available to Zenith. The third party was pursuing their claim and Zenith was of the view that if the case did go to court Mr K wouldn't win and a shared 50/50 liability settlement was the best possible outcome.

In all the circumstances I think Zenith's decision to settle the claim on a 50/50 liability basis was fair and reasonable and in line with the policy terms and conditions. It is unfortunate that Zenith initially sent Mr K an incorrect letter. Mr K says he didn't receive the correct letter sent a few days later, but it was sent to the same address as the letter he did receive, so I don't think Zenith can be held responsible for this. However Zenith has apologised, awarded Mr K compensation and allowed him to keep his no claims bonus. Even if Mr K had received the letter, it wouldn't have changed the fact that Zenith had settled the claim on a 50/50 basis. It is a fact that the claim was settled in this way and Zenith was correct in recording it as such, so I don't think Zenith should compensate Mr K for any increase in his insurance premiums or pay him any further compensation for the stress and anxiety he says it has caused.

My final decision

For the reasons given above I don't uphold Mr K's complaint. So I won't be asking West Bay Insurance Plc trading as Zenith Insurance to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or

reject my decision before 27 March 2024.

Sarah Baalham
Ombudsman