

The complaint

Mr S complains that Wakam held him liable for a claim made on his commercial motor insurance policy.

What happened

Mr S's car collided with the open door of another car. Wakam accepted liability for the claim as it said an independent witness had confirmed that the door had been open before Mr S approached the stationary car. Mr S thought the other driver was in breach of the law and had endangered other road users by opening her car's door as he approached.

Our Investigator didn't recommend that the complaint should be upheld. She thought Wakam was entitled by the policy's terms and conditions to settle the claim as it saw fit. And she thought it had done this fairly and reasonably after considering the evidence provided.

Mr S replied that he thought the other driver was in breach of the law. As he didn't agree, his complaint has come to me for a final 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.

I can understand that Mr S feels frustrated by Wakam's decision. I can see that Mr S is adamant that he wasn't at fault and that the other driver was fully responsible for the damage caused. He said there were no witnesses evident, and he wanted the matter taken to court. And he thought opening the car's door on the road was a breach of the law.

The investigator has already explained that it isn't our role to decide who was responsible for causing the accident. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate how the insurer made the decision to settle the claim. Did it act fairly and reasonably and in line with the terms and conditions of the policy? And has it treated Mr S the same as someone else in his position.

As set out on page 24 of Mr S's policy booklet, Wakam is entitled under the terms and conditions to take over, defend, or settle a claim as it sees fit. Mr S has to follow its advice in connection with the settlement of his claim, whether he agrees with the outcome or not. This is a common term in motor insurance policies, and I do not find it unusual. Insurers are entitled to take a commercial decision about whether it is reasonable to contest a third party claim or better to compromise.

That said, we expect an insurer to reasonably investigate a claim and consider the evidence available before making a decision on liability.

I can see that the evidence that Wakam had to consider was the two drivers' versions of events and photographs and engineers' reports on the damage caused to their cars. The other insurer then provided an independent witness statement that confirmed the other driver's version of events. Mr S said no witnesses were evident. But Wakam had no reason to doubt his testimony. And so Wakam accepted liability and paid the other insurer's outlay.

I can't see that there was any other evidence that Wakam should have considered. And so I think it fairly and reasonably decided that it would be unable to defend the claim and so accepted liability. And I'm satisfied that it's entitled to do this by the policy's terms and conditions.

Mr S thought the matter should be taken to court. But, as I've said above, it's for Wakam to decide how to defend a claim. And it's entitled to decide how best to do this. So I can't say it should have taken the matter to court.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 May 2024.

Phillip Berechree
Ombudsman