

The complaint

Mr B complains that AA Underwriting Insurance Company Limited (the AA) settled a claim on his motor insurance policy as split liability. He wants it to change this to non-fault and refund the other half of his premium.

What happened

Mr B said another driver had hit his car in the rear and he made a claim on his policy. The AA said the other driver claimed that Mr B slammed on his brakes, causing the collision. It took legal advice that it would be unable to completely defend the matter in court. And so it settled the claim as 50/50 split liability. Mr B was unhappy with this as he thought the other driver had contravened the Highway Code.

Our Investigator didn't recommend that the complaint should be upheld. There were no independent witnesses or camera footage available. So it was one driver's word against the other's. And she thought the AA had reasonably relied on legal advice which confirmed its decision to settle the claim as split liability, as it was entitled to do by the policy's terms and conditions.

Mr B replied that he thought the accident was the other driver's fault. He said he hadn't braked abruptly but had stopped behind a queue of cars at a traffic light. He said the other driver should have left sufficient distance and so should have had time to stop and so avoid a collision. Mr B quoted a legal website's examples. And he said the AA had earlier reassured him that the other driver was fully at fault.

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 B feels frustrated that he's been held partly at fault for a rear end collision with his car. And I can see that he's spent time and energy researching the justice of this outcome.

Mr B said he'd slowed and stopped behind other cars at a set of traffic lights when he was hit by the car behind him. The other driver said she was aware of the red light and was braking, but Mr B slammed on his brakes causing the collision.

Mr B quoted the views of various legal sites and the Highway Code. 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 B the same as someone else in his position.

The AA is entitled under the terms and conditions of its policy with Mr B to take over, defend, or settle a claim as it sees fit. Mr B 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.

Also, 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 its decision on liability.

AA didn't have evidence from independent witnesses or cameras to consider. And the two drivers provided conflicting versions of events. It first tried to settle the claim holding the other driver fully at fault. But the other insurer disputed liability and reimbursed half its outlay.

AA referred the matter to its legal partners for full recovery. But the legal service told Mr B that it was abandoning the recovery of the claim because of the lack of independent evidence to show that Mr B hadn't slammed on his brakes and because:

"...the third party insurer have already raised 50% of your insurers outlay and the remainder of the outlay is uneconomical to pursue".

It thought the best outcome in court would be a 50/50 split settlement. And the AA confirmed to Mr B that in the absence of further evidence it wouldn't change its stance on liability.

Mr B was concerned that the AA wouldn't have taken the matter to court in any circumstances. But I can confirm to him that this wasn't the case, and he was given incorrect advice about this.

Mr B said the AA had earlier told him that the other driver would be held fully at fault. And I can see that it did pursue the other insurer for an admission of liability in full. But if Mr B thinks the AA has caused him a loss of expectation, he would first have to complain to it to allow it a chance to respond before we can consider this concern further.

So I think the AA reasonably considered the evidence available. It tried to defend Mr B, but the advice from its legal service was that a 50/50 split liability settlement was the most likely outcome if the matter went to court. And, as it hadn't recovered its outlay in full, it recorded the claim as a fault against Mr B. But this doesn't mean that he was to blame for the collision.

The AA is entitled to decide to settle the claim as 50/50 by the policy's terms and conditions. And the AA isn't obliged to incur court costs if they are unlikely to be successful. And so I can't say that the AA has acted unfairly or unreasonably, and I don't require it to do anything further.

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 B to accept or reject my decision before 25 November 2024.

Phillip Berechree
Ombudsman