

complaint

Mr H and Miss H complain that Allianz Insurance Plc (Allianz) settled a claim, against their policy, as a fault one when they believe it should have been defended and the third party held at fault.

background

Mr H was involved in an accident on 3 September 2017. He was turning right into a side street and was hit by an oncoming vehicle. Mr H maintains that the driver of the other vehicle was not looking at the road and alleges that he was using his mobile phone at the time of the accident.

The third party denied that they were at fault and held Mr H responsible, they said Mr H pulled across them as they were proceeding safely, and they had right of way.

There were no witnesses to confirm either version of events and although Mr H tried he was unable to obtain CCTV from the area.

Allianz did initially defend the claim with the third party insurer, but when it became aware there was no CCTV it decided to accept liability and settle the claim on a fault basis.

Mr H was unhappy with this and so brought the complaint to us. The investigator didn't uphold the complaint, she felt that Allianz had acted fairly when investigating the claim and settling it the way it did.

Mr H disagreed and so the matter has been passed to me to decide.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where there's a dispute about what happened, I've based my decision on what I think's most likely to have happened in light of the evidence.

Although a number of issues have been raised, this decision only addresses those issues I consider to be materially relevant to this complaint. However, I've given careful consideration to all of the submissions made before arriving at my decision.

In deciding whether Allianz acted fairly in how it settled the claim I note the policy, like every other motor insurance policy I've seen, allows it to take over and conduct the defence or settlement of any claim. But it needs to be fair to Mr H and Miss H in settling the claim and by that I mean when it's more likely than not the claim against Mr H would succeed in court. This is because Allianz wouldn't want to risk all the costs and expenses in defending a claim that they're likely to lose in court.

Allianz considered the testimony of both parties and the rules of the highway code and based on all of the information available to it, thought it should settle the claim as it didn't believe it had enough evidence to defend it.

Mr H feels that Allianz should've done more to obtain the CCTV, that it could've gotten the third party's phone records and that it could've got the data from the Event Data Recording system (EDR) that may have been in the third party's vehicle.

I have considered this and I don't think that this would've changed things, let me explain. The CCTV if it could've been viewed would likely have shown what we already know; Mr H crossed the path of a third party vehicle which then hit his vehicle. It's unlikely to have shown if the third party was looking at his phone.

To obtain the third party's mobile phone records would first require the permission of the third party which I think he would be unlikely to give. But let's assume he did and Allianz had them, they still would not prove the third party was looking at the phone at the exact time of the accident, as this isn't known.

Moving to the EDR, firstly we don't know for sure that the third party vehicle contained this equipment. Secondly to obtain the information from this again Allianz would have to get over the hurdle of getting the third party's permission to do this, which I feel would be unlikely. Even if we assume the vehicle had the equipment and the data was provided to Allianz it still wouldn't prove that Mr H was not at fault, it would just show that there was an impact.

While I understand this has been very frustrating for Mr H, I don't think there is anything else Allianz could've done to defend the claim. Based on this I think was fair and reasonable for it to settle the claim. So I won't be asking it to do anything more.

my final decision

For the reasons given above, my final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Miss H to accept or reject my decision before 31 January 2019.

Amber Mortimer
ombudsman