

complaint

Miss M complains that U K Insurance Limited (UKI) have unfairly recorded her claim for damage to her car as a “*fault claim*”.

background

Miss M insured her car with UKI. Her car was damaged when a tree fell against it whilst it was parked in a street. She made a claim against her insurance.

UKI settled Miss M's claim, paying out for her car as beyond economic repair.

Miss M didn't agree that her claim was a fault claim though. She thought that the local authority – that were responsible for the street where the accident happened – were at fault. Miss M didn't think that UKI did enough to recover her loss from the local authority. So she complained to UKI.

UK Insurance told Miss M that they'd pursued the matter with the local authority but didn't think that they had enough evidence to successfully take the matter to court. They explained that the conditions of Miss M's policy meant that they were able “*take over and carry out any defence or settlement*” on Miss M's behalf.

Miss M brought her complaint to our service. Our investigator looked into the matter and thought that UKI had acted fairly in the way the claim was handled. Miss M was not happy with that response so asked for an ombudsman decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's understandable that Miss M was unhappy that her claim is recorded as a fault claim, as this may impact on her future insurance costs. I think it is worth explaining that the way this claim was recorded doesn't mean that Miss M was to blame for the damage. Insurance companies record claims on an industry database. Claims are recorded as being “*fault claims*” in cases where they have been unable to recover the costs from a third party. This was the case in Miss M's claim.

In looking into this complaint it isn't the role of our service to determine where fault for the damage lies. This would be the role of a court. Nor is it the role of our service to investigate or pursue Miss M's case against the third party. That was the role of UKI. What I have to consider, is whether UKI investigated Miss M's claim thoroughly enough and pursued her case in a fair and reasonable way.

When Miss M made her claim to UKI, they had an obligation to settle her claim promptly which I think they did. I have looked at what they did afterwards to pursue the claim against the third party that Miss M thought was responsible. That was the local authority with responsibility for the highway she was parked on.

I can see that UKI contacted the third party and their insurers. The third party didn't accept liability. The third party said that there was no evidence they had been negligent.

I've seen that Miss M provided photos proving that the tree had a chain and padlock around it and that the chain had cut into the tree as it had grown. The third party have produced expert opinion indicating that the healthy growth of the crown of the tree indicated that the tree was not obviously sick. UKI had no contrary evidence.

I'm aware that Miss M spoke with the tree surgeon that attended to remove the damaged tree. She explained that he told her the chain would have damaged the tree. Miss M didn't provide contact details for the tree surgeon to UKI to enable them to request an account from him. Miss M initially provided his car registration but this was not enough to identify and contact him. I understand that she has now spoken with the tree surgeon again but not provided his details to UKI. Even if UKI were able to speak with him, I am not sure that he could have provided evidence that would have made a difference.

I think that for UKI to have pursued this matter to court, they would have needed more compelling evidence than they had or could have obtained. Proving negligence on the part of the third party would have involved more than just being able to prove that the tree fell because of the presence of the chain. I think that they would also have needed to prove that the third party knew of the damage to the tree and had not done enough to address it. I can't see that UKI had that kind of evidence or that they could reasonably have been expected to obtain it. So I think that the decision they took not to pursue the claim against the third party to court was fair and reasonable given the circumstances described.

Miss M's insurance policy document explained that UKI had the right to pursue the claim on her behalf. This is common in motor insurance policies and meant that UKI had the right to decide how far to pursue this claim. I think that this condition was fair, providing that UKI made reasonable efforts to reclaim Miss M's costs. For the reasons I've given I think that UKI pursued this claim in a fair and reasonable way, so I don't uphold Miss M's complaint.

my final decision

For the reasons I've given, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 3 May 2020

Gary Lane
ombudsman