

complaint

Mr and Mrs L have complained about Liverpool Victoria Insurance Company Limited settling a claim against Mrs L's car insurance policy. Mr and Mrs L think that LV shouldn't have settled the claim in the way that they did.

background

Mr L was driving Mrs L's car when another car ran into him after he had made a U-turn. The driver and passengers of the other car made a claim against Mrs L's policy, for the damage to their car and their injuries. LV felt that the accident was probably Mr L's fault and that there was very little chance of them avoiding paying the other driver's claims if the case went to court.

Mr and Mrs L didn't believe that Mr L was at fault for causing the accident. Also, they didn't believe that LV did enough to look into the detail of the other driver's claims to see if the claims were legitimate. So they brought their complaint to us. The adjudicator was of the view that LV hadn't done anything wrong. Mr and Mrs L didn't agree and so their complaint 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.

It's not our role to decide who's at fault for an accident, as that is for the courts. Instead, we look at whether the insurer acted in line with the policy terms and conditions and whether their decision to settle a claim was reasonable.

Like almost all motor insurance policies, Mrs L's policy gives LV the right to take over the defence or settlement of any claim as they see fit. And they can make their own decision about whether it's reasonable to contest a claim or better to settle it. This might mean that LV makes a decision that Mr and Mrs L don't agree with but that doesn't necessarily mean LV has done anything wrong. In other words if Mrs L wants to be indemnified she must abide by their decision. We, however, do look to ensure they came to their decision reasonably and fairly.

I've seen that Mr and Mrs L feel very strongly about what happened and they've made a number of detailed points. However, I trust that they will not take as a discourtesy the fact that I focus on what I consider to be the central issues. Having looked at and considered everything, I don't uphold this complaint and I shall now explain why.

Mr and Mrs L don't think that an independent witness is telling the truth. Having looked at all the evidence, I don't share Mr and Mrs L's concerns. I've seen no evidence that the witness knew the other driver before the accident. Nor have I seen any evidence the witness stood to gain anything by being untruthful. Mr and Mrs L suggested that Mr L might work for the other driver's insurer. While I don't know if that's the case I find it most unlikely that he would've known whom the insurers involved were at the time of the accident. Therefore, whether he worked for an insurer or not couldn't have influenced his decision to provide his contact details as a witness. Also, I don't think some small inconsistencies between statements would mean that the witness' evidence wasn't reliable.

So, I think it was reasonable for LV to treat the witness as independent and truthful. Mr and Mrs L haven't given us any other evidence, except for their comments, that could lead me to believe that the witness' evidence couldn't be relied upon or that it wouldn't stand up in court.

Mr and Mrs L gave a measurement and timing between the points at which Mr L made his U-turn and the crash. They said that, based on those figures, they calculated that the other driver must've been speeding. But their timings and distances aren't agreed by all parties to the accident and they could easily be challenged. So I can't rely on Mr and Mrs L calculations as proof that the other driver was speeding. A court would most likely take a similar approach as it would not consider Mr and Mrs L figures to be independent or that they are provided by an appropriate expert.

Also, Mr and Mrs L said that LV should've offered to settle the claim on the basis that both drivers were equally at fault. This would have meant that in any event Mr L would have a fault claim on his record, as when a driver's claim is settled by an insurer on a 50/50 basis then their insurance record is affected in exactly the same way as if they were found solely at fault.

LV settled the claim on a 'without prejudice' basis which means that Mr and Mrs L are free to sue the other driver if they wanted to.

I appreciate that Mr and Mrs L believe that LV shouldn't have settled the claim and Mr and Mrs L's version of events is different from the other driver's. But I don't think LV have done anything wrong. Their records show that they considered all the evidence available. They looked at both sides' versions of events, medical reports, witness statements and ordered some investigation into the other driver's personal injury claims. I think that they reasonably considered the evidence available and decided that they couldn't successfully defend the claims. In reaching that view they noted that Mr L made a dangerous manoeuvre (a U-turn), and that the other driver had an independent witness who said that Mr L was at fault.

Therefore, even after allowing for what Mr and Mrs L said, LV felt that they'd little chance of successfully defending the other driver's claims in court. Having considered all the information, given the weight of evidence against Mr L's version of events, I think that LV's decision was reasonable.

my final decision

For the reasons I've given above, my final decision is that I don't uphold Mr and Mrs L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 13 November 2015.

Joe Scott
ombudsman