

complaint

Mr C complains that Ageas Insurance Limited settled a claim made against his motor insurance policy as 50/50 split liability. He wants it to remove record of the fault claim, reinstate his no claims discount (NCD), refund any difference in premium he has paid and refund his £200 excess. Mr C is represented by his relative, Miss C.

background

Mr C says another driver opened her door onto his passing car. The other driver said she was standing in the road, leaning into the rear of the car, and Mr C hit her already open door. Ageas' engineer said it was impossible to say from the damage to Mr C's car which version was correct. So Ageas agreed to split liability equally.

During the investigation, Ageas told Mr C that witness statements weren't needed from his four passengers. However, Ageas then quoted the other driver's passenger's witness statement in its final response letter to Mr C. He feels that his witness statements should also have been taken into consideration.

Mr C thought the other driver was also claiming for pre-existing damage. Ageas asked to see the other driver's engineer's report on the damage to her car. But her insurer never sent this.

Our adjudicator didn't recommend that the complaint should be upheld. She thought Ageas made its decision to split liability fairly based on the evidence available. She thought Mr C's witness statements simply contradicted the other driver's version of events, and weren't independent evidence. But she thought it was a misjudgement on Ageas' part to refer to the other driver's passenger's witness statement in its letter to Mr C.

Regarding the repairs to the other driver's car, she thought Ageas was entitled to settle the claim as it thought fit. Ageas had twice asked to see the engineer's report. This wouldn't affect Mr C's future premiums.

Miss C replied that Ageas' decision was unfair as the other driver should have taken more care.

my findings

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

I can see that this has been a worrying and stressful experience for Mr C. I was sorry to hear that he has been unwell. I can see that Miss C is adamant that Mr C wasn't to blame for the accident but that the other driver failed in her duty of care towards other road users.

I appreciate her strength of feeling, but 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?

I can see that the evidence Ageas had available was the two versions of events, photographs of the cars and its engineer's view. The other insurer sent it a passenger's witness statement. But I can see that Ageas didn't regard this as independent. I agree with the adjudicator that Ageas shouldn't have referred to this in its letter to Mr C. I can see that this led him to think it was unfairly considering this as evidence.

So there were no independent witnesses, and only one expert view for Ageas to consider. The engineer agreed that the damage showed that the other driver's door was open. But he couldn't say when it had been opened. Ageas thought a court would decide the case 50/50, so it agreed to settle the claim on this basis.

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

I think Ageas reasonably considered the evidence available. It settled the claim on the basis of this, as it's entitled to do under the policy. I think this wasn't unreasonable.

Mr C thought the other driver was claiming for pre-existing damage. I can see that Ageas agreed to look into this. From its records, Ageas twice asked the other driver's insurer for the engineer's report on damage to her car. But I can't hold Ageas responsible for the other insurer not sending it this. As it turned out, this wouldn't harm Mr C anyway as the amount paid out wouldn't affect his premium.

Mr C has been left with a fault claim. He lost one year's NCD. And his excess and his premium increased because of this accident. I can understand that he feels unfairly treated. But I don't think Ageas acted unfairly or unreasonably. I don't think it needs to do anything further.

my final decision

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 C to accept or reject my decision before 15 February 2016.

Phillip Berechree
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