



complaint

Mr R complains that, following a claim made against his motor insurance policy by a third party, Liverpool Victoria Insurance Company Limited ('LV') gave him incorrect information about the incident. Mr R is of the view that this prejudiced his position when the matter went to court.

background

A third party alleged that Mr R's wife was involved in an accident while driving Mr R's car. The allegation was that she had collided with the third party's parked and unattended vehicle, and the matter was brought to the third party's attention by an independent witness, Mr V. Mrs R denied any involvement. LV's solicitors advised that the matter was likely to be unsuccessful if contested, but LV decided to dispute liability.

Mr and Mrs R say that they only discovered the third party was alleging the incident occurred in the evening at the hearing, as LV had told Mr R that the alleged incident occurred early on the morning of the date in question. Mr R says their defence was prepared on that basis and he would have been able to obtain two witness statements to show that his vehicle could not have been involved in the accident at that time in the evening.

The adjudicator partially upheld the complaint. In his view, there were aspects of the complaint that LV had not handled well. However, in his view the error regarding the time of the accident did not have a significant impact on the outcome of the hearing. As Mr R disagreed, the matter was passed to me for review.

my findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint.

First of all, LV did not have an obligation to defend the claim, although Mr R appears to consider that it did. It had received legal advice that the claim was likely to be unsuccessful, and in these circumstances, a decision not to dispute liability normally follows. Once litigation had commenced, the decision on liability was a matter for the judge, who took into account all the circumstances of the claim.

I have read the judgement, and according to the judge, Mr and Mrs R's case was based on mistaken identity. I am satisfied that the judge made it clear he considered Mr V, the independent witness who alerted the third party to the accident, to be a "*persuasive and cogent*" witness. The judge said it was "*inconceivable*" that Mr V was mistaken in what he saw, or that he had not noted the correct registration number of Mr R's car.

In my view, although the judge also commented on the timings, and said they were significant, he pointed out that Mr and Mrs R were themselves inconsistent about timings. Furthermore, he said that as Mr R could not give any evidence in relation to the accident itself, since he was not there, the matter came down to a conflict between the evidence of Mr V and Mrs R. He considered Mr V's recollection to be better.

In my view, given everything said by the judge, it is very unlikely to have made any difference to the judgement if Mr R had known about the correct timing of the incident. I note that LV's solicitors say that he was advised of the correct time prior to the hearing, but even if that is not the case, I am not persuaded that Mr R's potential witnesses would have been helpful. It seems to me that evidence about the likely timing of Mrs R's movements on the evening in question would have been trumped by Mr V's evidence of the actual incident.

In addition, I agree with the adjudicator that the witnesses Mr R had in mind are unlikely to have been considered independent, whereas Mr V was simply a member of the public acting as a "*dutiful citizen*", according to the judge, whatever time the accident took place.

The judge also commented that he believed the damage noted to Mr R's vehicle by an engineer could have been caused by the accident, and did not accept the alternative explanation put forward by Mr R.

I have also reviewed LV's complaints handling in this matter. I agree with the adjudicator that it could have been better, and that LV failed to consider fully the judge's notes, as Mr R had requested. I appreciate why Mr R was unhappy about that, and by its failure to provide a copy of the note from counsel who represented LV at the hearing. That caused a delay with the handling of this complaint, in my view. However, LV has already agreed to provide compensation for its shortcomings in this respect.

Overall, whilst I do not consider LV's handling of the claim to have been adequate in some respects, I am not persuaded that Mr R was prejudiced by the inaccurate timing information given to him by LV.

my final decision

My final decision is that I uphold this complaint in part. I require Liverpool Victoria Insurance Company Limited to pay Mr R £150 in compensation for the distress and inconvenience caused to him by its handling of his complaint.

Susan Ewins
ombudsman