

complaint

Mr U complains that Haven Insurance Company Limited settled a claim against his motor insurance policy, despite not having clear evidence that he was involved in the accident.

background

Haven told Mr U that two passengers who'd travelled in his taxi claimed they were injured due to an accident that was his fault. Mr U said from the start that there hadn't been an accident. He accepted there was an *incident* on the date specified. He'd tried to move left into a bus lane. The driver of a car already in that lane sounded his horn hard. Mr U stopped his car. The other driver shouted at Mr U, who'd forced him to brake. There was no contact between the cars, so both cars then drove off. Mr U said the passengers' claims were false.

One of the passengers withdrew her claim, but Haven strongly defended the other passenger's claim for many months. It noted that he'd given very vague details of the incident. An independent engineer looked at Mr U's car shortly after the incident. He didn't find any damage to it that fitted with the moderate impact the passenger had described. Its investigator said Mr U was credible, truthful and likely to be an impressive witness. Haven thought the passenger's medical prognosis was 'considerable' in the circumstances.

Months later, the passenger described the red car he said Mr U's car had hit and gave its registration number. Haven's solicitor thought the engineer's photos showed red paint on the front passenger-side of Mr U's car. Haven settled the claim. Mr U argued strongly that it should be defended in court, but Haven's solicitor said the prospect of success was low.

Our adjudicator didn't think Haven had acted fairly and reasonably in settling the claim. She didn't agree there was evidence of paint transfer, which seemed to be the main reason for settling the claim. The engineer hadn't referred to it, nor had he found moderate damage to Mr U's car to support what the passenger had said. She didn't think there was anything to show Mr U's car was involved in the collision described.

The adjudicator said Haven should amend all records and allow Mr U's no claims discount ("NCD"). It should review and refund his premiums, as appropriate. She thought it should also pay him £200 compensation for poor service. That included allowing a court judgement to be entered against him that could have been avoided.

As Haven disagreed with the adjudicator, the complaint was passed to me for review.

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 think it should be upheld.

Insurers are entitled to rely on legal advice and guidance from experts, such as independent engineers. But we still look at whether the insurer's carefully weighed all the evidence in the particular circumstances of each case, in fairness to the consumer.

I think the legal advice Haven was given had to be balanced with everything else. The solicitors thought there was red paint transfer over the wheel-arch on the passenger-side of Mr U's car. But the engineer who physically examined the car soon after the alleged event didn't think so. It's something an engineer would certainly have noted and commented on.

The adjudicator thought the colour on the photo looked like a reflection. I agree it's far more likely to be a reflection than anything else, although I think the colour shows as pink, rather than red. I think red paint would show as red, from any angle. Yet another photo of the same part of the car shows *no* colour. There's a pink hue on the chrome at the centre of the car's front grille. From the *very limited* account the passenger gave, that part of the car couldn't have touched the red car. I think that adds to the strong likelihood of the colour being a reflection. But in my view the main point is the engineer didn't see any paint transfer.

I think the rest of the engineer's report supports Mr U's account of not having been in an accident as claimed by the passenger. Two of the three areas of *minor* damage he noted on the car were in the wrong place to have any link to the impact the passenger reported. From what I've seen, the passenger couldn't say exactly where any damage was on either car. And being jolted sideways - whilst wearing a seatbelt - would require at least a moderate amount of force from an impact. Yet there was no moderate damage to the car and no claim from another driver. I think that also supports Mr U's version of events.

The second passenger – who initially claimed very similar injuries to the first passenger – simply withdrew her claim. I think that's odd. The injuries were more than superficial and had a long-lasting effect on the other passenger. And it seems neither passenger told the taxi-firm that Mr U had caused an accident and injuries either. The firm seeks feedback from passengers to rate its drivers. Yet they just paid the fare and said nothing.

Haven's investigator found Mr U's account wholly credible. But the passenger's account of events seems to lack credibility. He may well have been a poor witness. He said he got a lift home after the accident. He also said Mr U drove both passengers to their initial destination – and that seems to be accurate. The other evidence he gave about the accident doesn't tie up with the facts from elsewhere. I think Haven could've asked to interview him. It could at least have put some very searching questions to him. But it seems that didn't happen. I don't think that was fair to Mr U. It could have helped to change the outcome.

I don't think Haven's decision to settle the claim against Mr U was reasonable in all the circumstances of this particular case. I think the decision caused him a fair amount of upset as well as time and inconvenience in trying to sort the matter out. And Haven also allowed a judgement to be entered against him when that could have been avoided.

my final decision

My final decision is that I uphold this complaint. I require Haven Insurance Company Limited to do the following:

- Remove the record of the incident, including that on the central Claims and underwriting exchange ("CUE")
- Provide a letter to Mr U setting out the action taken to change the records
- Allow Mr U's NCD
- Amend Mr U's premium and refund any extra sum he's paid due to the incident
- Pay Mr U £200 compensation for poor service

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 26 July 2017.

Susan Ewins

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