

## **complaint**

Mr I's complained about the way Sabre Insurance Company Limited is dealing with a claim he made under his car insurance policy.

## **background**

Mr I was unfortunately involved in an incident with another vehicle. He contacted his insurer, Sabre to report the incident.

Mr I said the initial claims process was confusing. He bought his policy under a trading name of Sabre – so it wasn't clear if he was speaking to the right business. After being passed to a claims management company (CMC), Mr I spoke to Sabre and asked his insurer to deal directly with his claim.

A couple of weeks later Mr I made several complaints to Sabre about the way it was handling his claim. He wanted it to settle the claim as a non fault claim, refund his excess to him and compensate him for the trouble and upset it had caused him.

Sabre said it was still investigating the claim and looking to hold the other driver at fault for the incident. But it told Mr I if the other driver didn't accept full liability, it would look to settle the claim on a shared liability basis.

Mr I asked us to look at his complaint. Our adjudicator didn't recommend his complaint should be upheld. She felt Sabre was dealing with Mr I's claim reasonably and in line with the policy. It hasn't yet settled the claim and is continuing to investigate.

Mr I didn't agree. He doesn't believe we've addressed all of his complaints.

So the matter 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 very clear that Mr I was shaken by the incident and by his interaction with the other driver afterwards. I've no doubt the experience was upsetting for him and his passengers.

We don't decide who is at fault for an incident. This is the role of the courts. But we can look at whether Sabre has acted reasonably when investigating the claim and if it's acted in line with the terms of Mr I's policy. I think Sabre has and I'll explain why.

Mr I's policy has a term which isn't unusual as it is in most motor insurance policies I've seen. Sabre has the right to take over the defence or settlement of any claim. And it can make its own decision about whether it's reasonable to contest a third party's claim or better to settle it. So this might mean Sabre makes a decision Mr I doesn't agree with, but the policy allows Sabre to do this. It doesn't mean that – as Mr I says – Sabre has 'carte blanche' to make an unfair decision. Sabre needs to show that it's properly investigated the claim and reached its decision in a fair way. Sabre hasn't yet decided how it intends to settle the claim. But from its investigation so far, I think it has acted reasonably.

The circumstances of the incident are that Mr I was travelling in the middle lane of three lanes approaching a roundabout. He intended to exit the roundabout by taking the right hand lane of a two lane exit. Another vehicle was on his left, and as Mr I proceeded to exit, the other vehicle collided with his car. Mr I says the other driver was completely at fault for the incident as he was wrongly intending to take the following exit and attempted to undertake Mr I's car, causing the collision. The other driver's insurer hasn't accepted liability.

When Mr I called Sabre, he was passed to a CMC. CMCs only tend to deal with clear non fault claims. One advantage of dealing with a CMC is that a customer doesn't have to make a claim under their policy. The CMC can offer a package of products that wouldn't be available under their car insurance policy: like similar hire car, repairs and not having to pay the excess. They usually provide the hire and repair on credit, with the expectation that they'll claim the costs back from the third party's insurer. But, where they can't do that – for example; because the other driver's insurer doesn't accept liability – the consumer has to pay back the costs. Usually the consumer will have signed a credit agreement to this effect. So there is a risk of costs to the customer if liability isn't found in their favour.

Two days later Mr I spoke to Sabre and decided he would prefer his claim to be dealt with by Sabre. He's told us that he's very unhappy at being put through a rabbit warren of companies to deal with his claim. He doesn't believe Sabre gave him enough information to make an informed decision and so the initial claims process was confusing.

I can understand how the claims process could have caused confusion for Mr I. There are a number of options potentially available to a consumer in any motor claim – and these depend on the circumstances of each case – and on the existing cover they have with their insurer. Mr I now feels that Sabre misled him and he would have been better off having his claim handled by the CMC. But I can't say that Sabre did anything wrong by initially providing an alternative route to Mr I – and giving him the option to have his claim dealt with by it. From the call notes provided, I think Sabre explained the options available to him.

It was ultimately Mr I's decision as to whether the CMC or Sabre dealt with his claim. And as the other driver hasn't admitted liability, I don't know if the CMC would have continued to deal with Mr I's claim or handed it back to Sabre. This can happen if it doesn't look like a third party is going to admit liability early on.

An engineer decided that the costs to repair Mr I's car were more than his car was worth. So Sabre paid Mr I the market value for his car. Mr I believes the other driver should have paid for his car to be repaired as he was at fault for the incident. And he's unhappy that Sabre deducted the excess from the settlement sum it paid him. Mr I believes Sabre should have provided him with a courtesy car. Mr I retained his car, so Sabre also deducted a salvage fee of £48.

Mr I's policy says Sabre can settle his claim by paying either to repair his car or the cash amount for its total loss. This will be no more than the market value. And it will provide a courtesy car during the period his car is being repaired.

As Mr I's car wasn't repaired, he wasn't entitled to a courtesy car. And Sabre paid the maximum settlement sum it would pay for a claim, so I think it acted correctly and in line with the policy. Because Mr I kept his car, it isn't fair for him to also receive the full market value. So Sabre is entitled to deduct a reasonable fee for salvage.

Mr I says it took Sabre two months to pay him the market value for his car. Sabre sent Mr I a settlement cheque two days after it received the V5 registration document it asked Mr I to provide. So I don't think Sabre is responsible for any delay in sending Mr I his settlement cheque.

The excess is the first amount of any claim for loss or damage and is always payable, irrespective of who is at fault. This is outlined under Mr I's policy. Sabre has referred Mr I under the legal expenses cover of his policy to help him recover any uninsured losses, such as his excess. The legal expenses provider told Mr I it's unable to claim for losses until the claim is settled. This is correct. As Sabre is still investigating the claim, the decision as to how the claim will be settled hasn't been made yet. So Mr I's uninsured losses can't be recovered from the other driver unless - and until - the claim is settled on a 'non fault' basis.

A couple of weeks after the incident, Sabre wrote to Mr I to say it intended to settle the claim on a 50/50 liability basis. Mr I was unhappy with Sabre's view and felt it hadn't properly considered his account of what had happened.

Sabre sought legal advice - which it shared with Mr I. The solicitor reviewed all of the information provided by Mr I. The solicitor concluded that if the case were to go to trial, a good outcome might be 65/35 in Sabre's favour. It was worth making enquiries with the police, as Mr I told Sabre the other driver was the subject of police prosecution. But even so, there was still a good chance Mr I wouldn't be held 'blame free' for the incident by a Judge.

I understand Mr I doesn't accept the solicitor's view and I've read his reasons why. But I think Sabre was reasonable to seek legal advice - and it's entitled to consider that advice when deciding how best to deal with a claim.

Mr I says Sabre hasn't told him they are still investigating the claim. In its final response, Sabre said if the other driver doesn't accept any liability for the incident, it will raise court proceedings. But - if the other driver is prepared to accept shared liability for the incident, it will accept this on a 'without prejudice' basis. This means Mr I can still claim for any uninsured losses against the other driver directly if he wants to. So I think Mr I was aware that Sabre hadn't yet made a final decision on how to settle his claim.

Mr I says if Sabre had done its job properly and held the third party to account, he wouldn't have had to pay costs as the other driver was at fault.

When liability is in dispute, it's not possible to say how long it will take for the claim to be settled. An insurer cannot insist on the outcome - ultimately this is the role of the courts. And if the matter goes to court, it's likely to take considerably longer before the claim is settled. I understand Mr I strongly believes he isn't at fault for the incident. So he feels Sabre has been unreasonable to him. But until the claim is settled, Sabre cannot treat the claim as though it's a 'non fault' claim.

Sabre is still continuing to chase the police for a report. In December 2017, the police told Sabre it hasn't made a decision regarding police proceedings. It has up to six months from the date of the incident to make a decision, so no police report was available. Sabre is continuing to look to recover the costs of Mr I's claim from the other driver's insurer. But it's possible that Sabre may decide to settle this claim on a shared liability basis.

I know that Mr I doesn't think Sabre has investigated his claim properly. But Sabre is entitled to take a view on how best to settle the claim – considering the legal advice it's received, any outcome to the police investigation, and to consider the risk of having to pay significant costs if it went to court.

I think Sabre has taken into account all the information and so far dealt with the claim in a reasonable way.

**my final decision**

For the reasons I've given above, 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 I to accept or reject my decision before 9 March 2018.

Geraldine Newbold  
**ombudsman**