

complaint

Miss G has complained that Pinnacle Insurance Plc wrongly held her named driver at fault for a claim made by another driver under her motor policy.

background

Another driver claimed that Miss G's named driver caused damage to their car in October 2015 so this other driver made a claim to Pinnacle. Miss G didn't believe any damage had occurred to her car or this other car. However, she allowed Pinnacle's engineer to examine her car. Following this Pinnacle refused to pay the other driver's claim.

However, in September 2017, the other driver issued legal proceedings, Pinnacle looked at the case again and decided this time it wouldn't be able to defend the other driver's claim and paid it.

Miss G's policy has an all sections excess, which means Miss G pays the first £3,000 of any claim, so it asked Miss G to pay this. Miss G didn't think this was fair and brought her complaint to us.

The investigator thought Pinnacle was unfair so she thought Miss G's complaint should be upheld. Pinnacle didn't agree so Miss G's 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. Having done so, I'm upholding this complaint. I'll now explain why.

As the investigator explained, we don't decide who is at fault for causing an accident or damage, as that's a matter for the courts. Miss G's policy in line with virtually every other motor policy permits Pinnacle to come to its own decision on liability too.

However we do look to make sure the decision on liability was fairly reached and in line with the policy terms. Here, I don't think it's reasonable for Pinnacle to have decided in October 2015 to not pay the other driver's claim and then change its mind two years later simply because the other driver issued legal proceedings.

Initially Pinnacle's engineer's report was enough for Pinnacle to refuse to pay the other driver's claim. This is because he couldn't say for definite the marks on Miss G's car were consistent with the other's driver's claim. It now transpires the report showing the other driver's damage isn't consistent with Pinnacle's report on Miss G's car in any event. Therefore, I don't consider it reasonable solely in the face of legal proceedings being issued for Pinnacle's view to have changed.

Pinnacle said there was a call recording from Miss G's named driver admitting liability but it hasn't been able to produce a copy of that call recording. However, Pinnacle's system notes don't support that, as on 12 October 2015 Pinnacle noted the named driver denied being involved in the accident but admitted being involved in a previous accident. And then on 29 January 2016 there's an entry by Pinnacle in its system notes saying that this accident needed to be recorded as 'non-fault' on Miss G's insurance record.

Pinnacle did obtain legal advice but that legal advice is based on the erroneous fact the named driver admitted liability and therefore in my view such legal advice doesn't carry much weight.

The other driver did produce a witness who alleged noted Miss G's car being inadvertently reversed into the other driver's car. That witness said the driver of Miss G's car left some details on the other driver's car but detailed the registration number incorrectly. However bearing in mind all of the above, I consider that casts further doubt on whether this witness' account would stand up in a court hearing.

So taking all of this into account, I consider on the balance of probability that Pinnacle hasn't been reasonable in settling the other driver's claim here, ensuring that Miss G must pay her all sections excess or part of it.

my final decision

So for these reasons, it's my final decision that I uphold this complaint. Therefore, Pinnacle should no longer demand any payment of the excess or part of it from Miss G.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 17 May 2020.

Rona Doyle
ombudsman