

complaint

Mr S complains that U K Insurance Limited ("UKI") wrongly recorded a fault claim against him when he made a claim on his motor insurance policy.

background

Mr S's car was hit by the car behind, which in turn had been hit by a third car, and was shunted into Mr S's car. The third car fled the scene and Mr S didn't get its registration plate number. As Mr S wasn't at fault for the accident, he didn't think it was fair that he had to pay the policy excess when repairs were done on his car. And he didn't think his no claims discount ("NCD") should be affected, either.

UKI said it had investigated the incident, but without being able to identify the driver of the third car it couldn't recover what it had paid out on the claim. It said Mr S had benefitted from the policy cover (by making a successful claim on it) so his NCD was affected. It said it couldn't take legal action against an unknown driver. As UKI couldn't show that the driver of the *second* car was negligent, it said there was nothing more it could do.

One of our investigators considered Mr S's complaint. She thought UKI had acted reasonably. She noted that it had contacted the police and the insurer of the second car. Neither had any details of the third car that had caused the damage to the other two cars. She thought it was fair for UKI not to allow Mr S's NCD. She said the *uninsured drivers promise* in the policy didn't apply because Mr S didn't have the required details of the other car that were needed for it to apply. She also noted that the policy didn't offer cover for the injuries Mr S had sustained. She said he could contact the Motor Insurance Bureau ("MIB") as it may be able to assist him.

Mr S didn't accept the investigator's view. Later on, another investigator considered his complaint and agreed that it shouldn't be upheld. Mr S said he wanted a review of it by an ombudsman, so it was passed to me.

my findings

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

As Mr S wasn't to blame for the accident, I can see why he doesn't think he should lose out as a result of it. But I don't think UKI has acted unreasonably. Mr S made a claim on his policy and UKI paid it by having his car repaired. Normally UKI would have tried to recover its outlay from the insurer of the person who caused the accident. In this case, UKI can't show that the driver of the second car was at fault, as he was shunted into Mr S's car by the third car. So UKI would normally try to recover its costs from the insurer of the third car.

Unfortunately, despite making enquiries to the police and to the second driver's insurance company, UKI doesn't have any details of the third party car or its driver. I don't think it could have done anything further to investigate the matter.

Where an insurer has paid a claim and can't recover its losses, it's standard industry practice for a 'fault' claim to be recorded against the policy holder who made the claim. That doesn't mean that any blame attaches to that person. It just reflects the fact that the insurer can't recover its outlay.

Given Mr S's claim, I don't think it was wrong for UKI to tell him his NCD would be affected. And he won't be able to recover the policy excess he's paid. The person to blame for the accident isn't known, so it can't be claimed back from that person or from another insurer. If the uninsured drivers promise applied, then Mr S would retain his NCD. But in order for it to apply, UKI would have to be able to establish that the other driver was uninsured. The only way to do that would be to have the details of the car, which aren't available.

Mr S's policy doesn't provide cover for the injuries he's sustained. But the MIB has a scheme that deals with untraced drivers, so it may be able to assist him. I can see that UKI advised Mr S to contact the MIB whilst it was looking into the claim, as did the investigator.

I sympathise greatly with the position Mr S has found himself in, but as I don't think UKI has done anything wrong, I can't uphold his complaint.

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 S to accept or reject my decision before 15 May 2020.

Susan Ewins
ombudsman