

complaint

Mr D complains that Advantage Insurance Company Limited (trading as Hastings Direct) settled a claim made against his motor insurance policy on a 50/50 split liability basis when he says he wasn't at fault. He is also unhappy with how it handled his claim and responded to his complaint. He wants all his excess refunded and an explanation of why his claim was settled like this.

background

Mr D was in a collision with a lorry when lanes merged. The drivers blamed each other. Hastings said there was no independent evidence to show who was at fault, so it settled the claim 50/50 without prejudice. This left Mr D still able to take the lorry driver to court, if he so wished. Mr D said there was an independent witness but Hastings hadn't contacted her. He said it hadn't responded to his complaint. It hadn't refunded his excess.

Our adjudicator recommended that the complaint should be upheld in part. She thought Hastings had made reasonable attempts to contact the witness, but without success. She thought the 50/50 split liability settlement was reasonable in the circumstances. Hastings wasn't obliged to recover Mr D's excess. But she thought the claim could have been handled better. She thought Hastings should offer Mr D £150 compensation for this.

Hastings agreed to offer £150 compensation. Mr D replied that he'd never agree to accept 50/50 liability but he would accept £150 compensation.

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 can see that Mr D is adamant that he wasn't to blame for the accident and that it was entirely the fault of the lorry driver.

But it isn't our role to decide who was responsible for causing the accident. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate how the insurer made the decision to settle the claim. Did it act fairly and reasonably and in line with the terms and conditions of the policy?

Hastings has already explained that it is entitled under the terms and conditions of its policy with Mr D to take over, defend, or settle a claim as it sees fit. Mr D has to follow its advice in connection with the settlement of his claim, whether he agrees with the outcome or not. This is a common term in motor insurance policies.

Hastings thought it was one person's word against the others. It thought the best possible outcome if the matter went to court would be 50/50 split liability. So it settled on that basis, as it's entitled to do after considering the evidence. This was statements from the two drivers, each blaming the other.

Mr D said his witness told him Hastings hadn't contacted her. But Hastings said it tried to contact the witness. It has shown that it called her once and wrote to her four times at the correct address but without receiving a response. It didn't have her email address. In any case, I don't think it should have pressed her further. It's not allowed to harass people. I thought its attempts to contact the witness were reasonable.

So I think Hastings reasonably considered the evidence available. I think it's justified its decision to settle the claim 50/50 split liability. I don't think it need change this. Having a fault claim on his record will affect Mr D's no claims discount and his premiums. But I can't say this is unreasonable as Hastings hasn't recovered all its outlay from settling the claim.

I can see that Mr D has now received back half his excess which was refunded by the other insurer. I don't think Hastings needs to refund the other half as the excess is payable when a claim is made. This is set out in Mr D's policy.

Hastings has agreed that its service could have been better. It's agreed to pay Mr D £150 compensation for his time, trouble and upset. Mr D says this is little compensation for the two years it's taken to reach this point. But, looking at the delays and the slow responses, I think this is reasonable. It's in keeping with the level we'd award.

Mr D says that he won't accept 50/50 liability and this shouldn't be a condition of awarding the compensation. I can appreciate his strength of feeling. But I think it's for him to decide to accept or reject my decision, as he chooses.

my final decision

My final decision is that I uphold this complaint in part. I require Advantage Insurance Company Limited (trading as Hastings Direct) to pay Mr D £150 compensation for its poor handling of his claim, as it's agreed to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 February 2016.

Phillip Berechree
ombudsman