

complaint

Miss O complains that Tesco Underwriting Limited settled a claim made under her car insurance policy on the basis of a 50/50 split in liability.

background

In August 2013, while Miss O was travelling in a slow moving line of traffic, she was involved in a collision when another vehicle emerging from her left in to the lane she was in, clipping the back of her car. Miss O said a bus was obstructing the lane to the left of her which was why the other driver was moving into her lane. The other driver said that the accident occurred at a point where two lanes were merging into one. He said Miss O hadn't waited for him to complete his move into what was about to become a single lane. Miss O recovered her uninsured losses through a solicitor. Tesco agreed to settle her claim on a 50/50 split of liability. This meant the accident was recorded as a 'fault' incident which could have affected her no claims discount (NCD).

The adjudicator who investigated the complaint thought that Tesco had acted reasonably. He said that Tesco was entitled under the terms of the policy to settle a claim on the best terms possible. He noted the lack of an independent evidence which could corroborate Miss O's account of what happened and said that, as the claim had been settled on a 'without prejudice' basis, it remained open to Miss O to make her own claim against the other driver if she wanted to.

Miss O didn't accept this analysis of her complaint. She said that Tesco should have been willing to support her in court action against the other driver. She asked for an ombudsman to review the case.

my findings

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

This was a case in which being able to identify the exact location of the accident was important. If the accident occurred at the point where the two lanes merged into one this would support the other driver's account of the accident. If it occurred nowhere near that part of the road it was likely that Miss O's account would be preferred. Unfortunately Miss O didn't stop immediately. She says that she felt intimidated by other driver and so drove on some distance before stopping.

Tesco has sent us its contact notes. They are clear and detailed and I accept they are an accurate record of its conversation with Miss O following the accident. Tesco's file note shows that during a phone call on 29 August, Miss O told the claims handler that she couldn't remember much of the accident location. In a follow up call on 6 September she said she would have to drive back to see where the collision had occurred. She phoned back, having done so, and told the claims handler that she could find the exact stretch of road. Since there is a point where two lanes merge into one on that road, I think this meant that it was necessary for Tesco to approach this claim with some caution.

That difficulty was compounded in my opinion by the fact that there were no independent witnesses to the accident, no CCTV footage available and the damage to Miss O's car was consistent with either account of the collision. This was certainly the view taken by the

solicitors dealing with Miss O's claim for uninsured losses. When the other driver's insurer put forward a settlement based on a 50/50 split of liability, Miss O was asked to give this offer serious consideration. The claim was finally settled in her favour but without any formal admission of liability.

The fact that Miss O recovered all her uninsured losses, doesn't mean that Tesco's decision to agree to a 50/50 liability split was wrong or unreasonable. It was entitled to take a commercial view of the claim. There could be no guarantee that a court would accept that the other driver was entirely responsible for the collision. Miss O's difficulty in remembering the place where the collision happened threw the outcome of any legal action into question. If the case had gone to court and the judge decided that Miss O was liable, at least in part, for the accident, Tesco would have had to pay significant legal costs on top of any award to the other driver.

It follows that I'm satisfied that Tesco was entitled to reach the decision that it did. Unfortunately this meant that the claim was recorded as a 'fault' incident with the potential to reduce Miss O's NCD, although I understand that it was protected so it won't be affected.

my final decision

I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 9 November 2015.

Melanie McDonald
ombudsman