

complaint

Mr E has complained about Tradewise Insurance Company Limited's settlement of a third party claim against his motor insurance policy on a split liability basis.

our initial conclusions

The adjudicator recommended that the complaint should not be upheld. He was satisfied that Tradewise had given sufficient consideration to the third party claim, and thought its decision to settle was fair and reasonable in the circumstances. Mr E's representative did not accept the adjudicator's findings, and so the case has been referred to me for a final decision.

my final decision

To decide what is fair and reasonable in this complaint, I have considered everything that Mr E and Tradewise have provided. Under the policy terms, Tradewise has the right to take over the settlement of the claim giving it the right to decide whether to take a third party to court or settle a claim. Legal proceedings are time-consuming, expensive and the outcome can be uncertain. As such, it will not always be commercially viable to take legal action against a third party. However, this service's general approach is that insurers should act fairly and reasonably in deciding whether to settle or pursue a third party. We expect insurers to make a reasonable assessment, based on a clear understanding of the evidence and the circumstances of the accident. I have carefully considered how Tradewise has handled this claim. I am satisfied that it carried out a reasonable investigation into the claim, and took into consideration all of the available evidence. Mr E's representative provided an independent engineer's report that supported his version of events but I am not persuaded that it is more persuasive than Tradewise engineer's report. I say this as Tradewise challenged the third party's account, referred the matter to a solicitor and looked into pursuing the matter at court. However, the legal representative concluded that the most likely outcome was a 50/50 split and the matter was concluded accordingly. As such, I consider it would be very difficult for Tradewise to fully defend Mr E in court given the clear legal advice. I judge that it acted reasonably in settling the claim on a 50/50 basis. **It follows that my final decision is that I do not uphold this complaint.**

Under the rules of the Financial Ombudsman Service, I am required to ask Mr E either to accept or reject my decision before 22 July 2014.

Colin Keegan

ombudsman at the Financial Ombudsman Service

The ombudsman may complete this section where appropriate – adding comments or further explanations of particular relevance to the case.

ombudsman notes

what is a final decision?

- A final decision by an ombudsman is our last word on a complaint. We send the final decision at the same time to both sides – the consumer and the financial business.
- Our complaints process involves various stages. It gives both parties to the complaint the opportunity to tell us their side of the story, provide further information, and disagree with our earlier findings – before the ombudsman reviews the case and makes a final decision.
- A final decision is the end of our complaints process. This means the ombudsman will not be able to deal with any further correspondence about the merits of the complaint.

what happens next?

- A final decision only becomes legally binding on the financial business if the consumer accepts it. To do this, the consumer should sign and date the acceptance card we send with the final decision – and return it to us before the date set out in the decision.
- If the consumer accepts a final decision before the date set out in the decision we will tell the financial business – it will then have to comply promptly with any instructions set out by the ombudsman in the decision.
- If the consumer does not accept a final decision before the date set out in the decision, neither side will be legally bound by it.