

complaint

Mr and Mrs N complain that U K Insurance Limited (UKI) unfairly rejected the part of a claim they made that was covered by the *uninsured driver promise* (the UDP) within their motor insurance policy. They also complain that they received poor customer service from UKI in general.

background

The background facts and issues of this complaint were set out in my provisional decision of 8 March 2013. In summary, I was minded to uphold Mr and Mrs N's complaint, on the basis that they had done all they could (and all they thought they had to do) to satisfy the UDP.

The driver of the car that collided with Mrs N's car fled the scene. Although Mrs N and a witness between them provided details of the make and model of the vehicle and the registration plate, the details did not match, so UKI was unable to trace the driver. The issue of whether Mrs N was partially responsible for the accident was not raised by UKI until after the adjudicator had issued his opinion (upholding the complaint) so I was minded to conclude that it should not be used as a reason to reject the claim. I also concluded that UKI's customer service was lacking and that it should compensate Mr and Mrs N for that.

I invited both parties to respond with any new arguments and evidence. Mr and Mrs N accepted my provisional decision. UKI reiterated that in its view the terms and conditions for the UDP had not been met; it said that Mrs N was aware from the outset that in order to benefit from the UDP the driver of the car had to be traced and UKI had to establish that he was uninsured.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I am not persuaded that I should depart from the findings in my provisional decision.

In my opinion, a strict interpretation of the UDP in this instance and in cases similar to this may lead to unfair or harsh outcomes for consumers. Whilst I appreciate that some consumers might try to abuse the UDP (perhaps by claiming they were in a collision with a non-existent third party who drove off) the circumstances in this case are clear. Independent witnesses have confirmed that Mrs N's car was hit by another vehicle, which was then driven off at speed. I consider it reasonable to assume that when a driver flees the scene of an accident in circumstances like this it is very likely that no insurance is in place, for whatever reason. It is also quite likely that in attempting the very difficult task of noting the details of a number plate on a car that is speeding off, particularly in the aftermath of a collision with that vehicle, a consumer may well make a mistake. That is more likely than not to be what happened to Mrs N; in fact she may not have been able to provide any details of the number plate at all, had a witness not been at the scene to assist her. There is also the possibility that the number plate was recorded correctly; drivers who do not stop at the scene of an accident are likely to be suspect and may well use false registration plates.

I am persuaded that Mrs N did everything she reasonably could in the circumstances and that she was entitled to believe that the UDP would operate in her favour. I am also satisfied that the UDP was a factor that influenced Mr and Mrs N to renew the policy with UKI in the

first place, and in my view, many consumers would have made exactly the same assumption about its operation as they did.

In terms of UKI's customer service, although UKI has provided evidence to show that it did advise Mrs N early on that there was no guarantee that the UDP would operate, it seems to me from the notes of the calls that for quite some time Mrs N would have been confused about what was happening and why. It also appears that it was Mrs N who initiated all the calls and that several months after the incident she was still unsure of the likely outcome. UKI has made no reference to the formal complaint Mr N made about the way Mrs N was spoken to, or about the apology he (but not Mrs N) received. On balance, I am persuaded that Mr and Mrs N did experience a moderate level of distress and inconvenience and that they should receive a moderate sum in compensation for that.

my final decision

My final decision is that I uphold this complaint. I require U K Insurance Limited (UKI) to do the following:

- Refund the policy excess, plus interest at 8% simple per annum, from the date it initially settled the claim to the date of further settlement.
- Reinstate the NCD.
- Refund any additional premium paid as the result of the loss of the NCD, plus interest at 8% simple per annum, from the date of payment to the date of settlement.
- Pay Mr and Mrs N £150 for distress and inconvenience.

Susan Ewins
ombudsman