

complaint

Mr D complains that Zenith Insurance plc agreed to deal with a claim against his motor insurance policy. He says that he wasn't involved in an accident.

background

Zenith told Mr D that a third party had notified it of an accident in June 2014 involving Mr D's car. It appears that the third party said that Mr D's car had collided with the rear of the third party's vehicle at traffic lights.

Zenith instructed its own solicitors. Zenith's solicitors made enquiries, which included arranging for an agent to take a statement from Mr D at his home. In November 2014, Zenith's solicitors wrote to Mr D and told him that it would deal with the third party claim, as it would be extremely difficult to defend it. Mr D wasn't happy about that and complained to Zenith.

Mr D says that he has no knowledge of a collision and that his car doesn't have damage consistent with the collision the third party describes. Mr D does recall that at the end of June or the beginning of July 2014, he was moving off from traffic lights where the collision is said to have taken place and he, along with other drivers, braked to a stop when the lead car at the lights did so. But he says that his car didn't collide with the vehicle in front, which he thinks may have been a van. Mr D wants Zenith to challenge the third party's claim and treat it as fraudulent.

The adjudicator didn't think that Mr D's complaint could succeed. She said that Mr D's policy gives Zenith authority to deal with claims on his behalf and that it made sufficient enquiries before deciding to do so.

Mr D didn't agree. He said that the photo the third party provided to Zenith is some distance from where the alleged collision is said to have taken place, shows the rear of his car and doesn't prove anything. Mr D says that Zenith have made a mistake here.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. It's clear that Mr D has very strong feelings about this matter. That is quite understandable. However, I trust that he will not take as a discourtesy the fact that I focus on what I consider to be the central issues.

We don't decide who is to blame for causing an accident or whether an accident took place at all. Those are matters for the courts. We do consider whether an insurer, Zenith in this case, acted in line with its policy terms and whether it acted fairly and reasonably in coming to its decision on liability.

Mr D's policy says that:

"We will be entitled to:

- *Take over and carry out the defence or settlement of any claims in your name or that of any other person insured by this policy and have full discretion to deal with the claims as we see fit;"*

Therefore, Zenith is free to deal with the claim against Mr D as it thinks fit. It can decide to settle a third party's claim if it believes it would be unsuccessful in defending that claim in court. This is a common term in motor insurance policies and I don't find it unusual. Insurers are entitled to take a commercial decision about whether it's reasonable to contest a third party claim or better to compromise.

I've considered this matter carefully. I agree with Mr D's concerns about the photo of his car provided by the third party. It doesn't prove that a collision took place. However, that's not the only evidence Zenith's solicitors took into account in coming to its view. It also considered Mr D's statement and what the third party said.

Based on the available evidence, I don't think that Zenith acted unfairly or unreasonably in deciding to deal with the third party's claim. I think it sufficiently carried out an appropriate investigation, including taking legal advice, which it followed. I do appreciate that Mr D has an entirely different view about the decision Zenith came to but I don't think that it did anything wrong here. In reaching that view, I am mindful that insurers and their legal advisers have considerable experience of how judges are likely to resolve this type of dispute. I think that Zenith acted reasonably in considering the available evidence and deciding to deal with the claim.

my final decision

I understand that my decision will disappoint Mr D but for the reasons I've discussed above, 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 D to accept or reject my decision before 13 November 2015

Louise Povey
ombudsman