

## **complaint**

Mr V complained about the way Tradewise Insurance Company Limited settled a car insurance claim he made following an accident in March 2016.

## **background**

Mr V said he was in the right hand lane intending to go straight ahead when the other driver, who was in the left hand lane and wanted to turn right, turned in front of him. Once Mr V's car had been repaired Tradewise wrote to the other driver's insurer asking for all its costs back. The other driver denied liability for the accident. He said that Mr V hit him from behind. He made no reference to any change of lane or intention to turn right.

Tradewise ultimately agreed with the other insurer to settle the claim with liability split 50/50. This was because there were no independent witnesses or other conclusive evidence which placed blame solely on one driver. Because liability was split, Mr V received 50% of his policy excess back. Mr V is unhappy because he feels the other driver should be held 100% liable.

## **my provisional findings**

I issued a provisional decision which explained why I didn't think the complaint should be upheld. In summary, I said:

### *liability*

- both drivers provided different descriptions of how the accident occurred, with each blaming the other
- there were no witnesses available who might have been able to clarify what happened
- Mr V wanted Tradewise to settle the claim based on the other driver being 100% to blame; but, equally, the other driver wanted his insurer to defend his claim on the basis that Mr V was 100% to blame
- given the lack of witnesses, it was impossible for either insurer to determine what actually happened and who was to blame
- I thought either driver's description of what happened was equally possible. So in the circumstances, I didn't think it was unfair of Tradewise to have agreed a 50/50 settlement with the other driver's insurer.

### *legal expenses insurance*

- the policy only provided legal expenses cover in respect of costs incurred defending manslaughter or reckless/dangerous driving causing death proceedings
- the policy had some uninsured loss recovery cover. But I thought this cover was dependent on the other driver being held at least partly liable for the accident
- it was agreed to split liability 50/50 – something I concluded was fair. That meant the other driver was deemed to be 50% responsible for the accident and 50% liable for Mr V's costs. This is why Mr V received 50% of his policy excess back.
- Mr V was offered the chance of having the matter heard in the small claims court but he chose not to complete the necessary forms in order to pursue this course of action because he thought he had legal expenses insurance. He did have legal expenses cover, but it wasn't with Tradewise.

- so, I wasn't persuaded that Tradewise treated Mr V unfairly by not providing him with legal expenses cover.

#### *hire car insurance*

- Mr V had separate hire car insurance provided by Tradewise. The policy provided cover for a hire car whilst Mr V's car was being repaired following an accident
- but Mr V never made a claim under the hire car policy. And Tradewise couldn't provide benefit under the policy or pay a claim unless a claim was made
- so I wasn't persuaded that Tradewise treated Mr V unfairly by not providing him with a hire car.

#### **responses to my provisional decision**

I haven't heard anything further from Tradewise.

Mr V disagreed with my decision. He still holds the other driver responsible for the accident as he drove without due care. He also said it was for his broker and the claim handling agent to pursue the third party on his behalf. He also questioned whether Tradewise kept the other 50% of his excess.

#### **my findings**

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

Mr V hasn't provided anything which persuades me to change my mind.

I explained in my provisional decision that the two drivers gave different explanations for how the accident occurred, and that each driver blamed the other. I accept that Mr V still holds the other driver liable. But the other driver still holds Mr V liable. And in the circumstances it remains my opinion that Tradewise treated Mr V fairly when it agreed to a 50/50 settlement with the other insurer.

As I said in my provisional decision, that agreement meant that the other driver was liable for 50% of Mr V's excess. So their insurer paid that to Tradewise, who passed it on to Mr V. Tradewise hasn't kept the other 50%.

I don't think it was for Mr V's broker or claim handling agent to pursue the third party on Mr V's behalf. Mr V's broker had no involvement in the claim. All it did was arrange the policy for Mr V. The claim handling agent could only act within the bounds of the policy provided by Tradewise. And the policy didn't provide legal expenses cover in this case because Mr V wasn't defending manslaughter or reckless/dangerous driving causing death proceedings.

Mr V did have a legal expenses insurance policy but it wasn't with Tradewise. It was provided by another insurer altogether. I can't hold Tradewise at fault if Mr V didn't receive any cover from the other insurer.

**my final decision**

For the reasons outlined above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 20 November 2017.

Paul Daniel  
**ombudsman**