

complaint

Mr H complains about the way in which UK Insurance Limited (UKIL) dealt with a claim he made under his car insurance policy following an accident in February 2014.

background

The accident occurred at a roundabout. The other driver was leaving the roundabout as Mr H was joining it. Mr H's vehicle clipped the rear of the other car. CCTV footage was eventually obtained but the matter dragged on. UKIL told Mr H it thought a 50/50 split on liability was most likely. Mr H's unhappiness about the service he was receiving from UKIL grew and in December 2014 he told UKIL that he wasn't willing to go to court to give evidence. He felt the claim by the other driver, which included a claim for personal injury, had been exaggerated. After he withdrew his support, UKIL made an offer to settle the claim on the basis of an 80/20 split in liability in the other driver's favour.

UKIL accepted there had been some problems with the service provided to Mr H. It offered him £50 for distress and inconvenience and £20 to cover the cost of his calls and letters.

The adjudicator who investigated the complaint thought it should be upheld in part. He thought the way in which UKIL had dealt with the issue of liability was fair and reasonable. He said there was a period of about five months when UKIL didn't let Mr H know what was going on and a further unnecessary delay in viewing the CCTV footage. He also criticised UKIL's agent for giving Mr H the impression at the outset that UKIL was likely to proceed on the basis that the accident was wholly the other driver's fault, when the recommendation in the agent's report was for a 50/50 split. He recommended that UKIL should pay Mr H another £200 for the trouble and upset the whole experience had caused Mr H.

Neither Mr H nor UKIL was happy with this recommendation. UKIL said the £70 it had already offered Mr H was fair and reasonable. Mr H emphasised what a difficult and stressful experience he had found it in trying to deal with UKIL. He clearly felt that his point of view had been ignored and that UKIL had no interest in fighting his corner.

my findings

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

UKIL has provided its contact notes for the claim. They are detailed and clear. In many instances, they accord with Mr H's recollection of events. I accept that they provide an accurate record of how UKIL dealt with this claim.

A collision on a roundabout often raises difficult issues of liability. Since the same road space is available for both navigating and leaving the roundabout the issue of who has right of way at any one time isn't necessarily straightforward. I think it was unfortunate that the agent UKIL sent to investigate the accident told Mr H liability it was likely to be settled in his favour. This was inconsistent with the recommendation he made to UKIL and it gave Mr H false confidence in the outcome of the claim.

UKIL says the reason it didn't give Mr H any updates between March and September was because nothing was happening. Although it's true that no final decision regarding liability was made during that time, the file shows the case was reviewed regularly. On 8 April a file

note was made that the claim was likely to settle on a 50/50 basis. On 11 June 2014 the other driver's solicitor told UKIL there was video footage that would show the accident was Mr H's fault. The CCTV footage was sent to UKIL in July. I think these were all matters that UKIL should have kept Mr H updated about. I have no doubt that its failure to do so undermined his confidence in UKIL and led to the difficulties that subsequently developed.

UKIL only wrote to Mr H in late August after the claim handler had returned from her holiday and viewed the CCTV footage. Mr H rang UKIL about the letter on 29 August and as a result of that call, the claim handler agreed to review the CCTV footage again with her supervisor, Mr D. This she did on 4 September. Having viewed it, Mr D took the view that there shouldn't be any further compromise beyond a 50/50 division of liability. He said that any court proceedings issued should be defended. A further lengthy discussion regarding liability took place on 8 September when it was noted that Mr H had been in the wrong lane for the exit he was taking. On 10 September UKIL received a letter from the other driver's solicitor threatening to issue court proceedings in seven days if liability wasn't conceded.

By now Mr H was very unhappy about the way in which the claim was being handled. He spoke to Mr D on 17 September and Mr D agreed to reassign the case to another claims handler, Mr F. I can see from the file that Mr F spent some time reviewing the evidence on 18 September. He sent Mr H a copy of the CCTV and they had what appears to have been a long conversation about what the footage showed on 23 September.

Mr H accepted that the footage was genuine. He accepted that it showed he was in the wrong lane but said that it was common practice for drivers taking his exit to position themselves in that lane on joining the roundabout. He pointed out that there was sound so it was possible to determine exactly the point of impact from the noise it made. Mr H has complained that no weight was attached to his analysis of the accident or the significance of being able to identify precisely where the vehicles were when the collision occurred. But I'm satisfied that Mr F understood Mr H's account of the accident and why the sound of the impact supported Mr H's case. His note says:

'I stated I would clarify the accounts of both drivers in this matter to make it dear. The TPD is stating that PH was in the wrong lane for his intended exit and that as TPV exited appropriately onto the AS, the PHV collided with the TPV. PH account is that the collision took place well before the AS exit point and near the entry to the Shell garage to his left and that TPD had cut across his vehicle to exit in the left hand lane rather than the right hand lane, or given the TPV speed that the TPD had to take the turn as he did to exit and cut across and side swipe PHV. PH confirms the sound on the CCTV footage will support his position.'

Mr F advised Mr H that notwithstanding this account, a 50/50 finding of liability was likely. His detailed note suggests that he referred to previous similar cases that had been decided by the courts in this way.

Having spoken to Mr H, Mr F then called the other driver's solicitor and gave him a detailed version of Mr H's account of the accident. He asked the solicitor to look at the CCTV footage again in the light of that account. The file shows that Mr F called Mr H on 14 October and again on 21 October with updates. When the solicitor didn't get back to him, Mr F followed this up on 23 October. The solicitor confirmed that having watched the video again his view that the accident was Mr H's fault hadn't changed.

Mr H says he sent in further evidence that was ignored. On 19th November Mr F made a note relating to the stills of the CCTV that Mr H had sent:

'PH confirms frame 11 of attached stills shows point of impact - PH states proves impact occurred outside the garage entrance and before the exit onto the AS (advised PH in call re statement that we can attach his analysis of the footage as part of his statement and exhibits) As TPS won't consider any split even though we have explained to them point of impact was at garage entrance point this is a matter which will become litigated. We can use the PH comments and analysis within his statement and use the still as exhibits.'

In the run up to Christmas Mr F was waiting for the medical evidence relating to the personal injury claim. This arrived on 22 December. Mr F reviewed the file and arranged for Mr H's witness statement to be amended to include the additional information Mr H had sent in. On 24 December Mr H sent an email that was only received after Christmas saying that he didn't want any further involvement in the case and wouldn't be willing to give evidence if the case went to court. On that basis UKIL decided it would have to settle the claim on the best terms available and made an offer of an 80/20 split in favour of the other driver.

Having set out the history of this matter in some detail, my findings are:

- UKIL's failure to keep in touch with Mr H or tell him the claim was likely to be settled on the basis of a 50/50 split in liability prior to September 2014 caused him unnecessary trouble and upset;
- From the time Mr D became involved in the case on 4 September 2014, the way in which the claim was dealt with cannot be faulted. In particular Mr F gave long and careful consideration to Mr H's evidence. He understood its significance and was willing and ready to use it if the case went to court. But he also recognised the difficulties that undoubtedly existed in defending the claim. He maintained regular contact with Mr H. He argued Mr H's corner with the other driver's solicitor. From the outset he gave Mr H a realistic and sensible assessment of the likely outcome of the case;
- On the evidence available, UKIL's view that the best that could be hoped for was a 50/50 split in liability was a fair and reasonable conclusion. The CCTV showed that at the time the accident occurred neither driver was indicating. Accidents such as this often involve a split second lapse in judgment on the part of one or both drivers. I haven't seen the CCTV footage but I am satisfied from the detailed analysis the notes contain that UKIL was entitled to reach the conclusion it did;
- There is no evidence to indicate that the other driver's claim was fraudulent or that the accident was staged;
- Up to the point at which Mr H indicated he wouldn't be willing to give evidence, UKIL continued to prepare the case on the basis that it would go to court. I note in particular the steps taken to amend Mr H's witness statement on 22 December;
- Once Mr H told UKIL he wasn't willing to give evidence, UKIL had little choice but to settle the claim on the best possible terms. It had no realistic prospect of defending the claim without Mr H.

This case highlights the importance of good communication in the early stages of a claim. Having been given a very upbeat assessment of the accident by UKIL's agent, Mr H was then left in the dark for a number of months. The very real efforts made by Mr D and Mr F to put things right couldn't restore Mr H's trust in UKIL and made it difficult for him to accept the realistic advice Mr F gave him. I agree with the adjudicator that UKIL's original offer of £50 (plus expenses of £20) isn't enough to compensate Mr H for the trouble and upset this failure to keep him properly informed caused.

I should add that UKIL suggested to the adjudicator at one stage that it had paid him another £150. Mr H denied this and apart from a single file entry there is nothing to suggest such a payment was made. I've concluded that the note on the file was entered by mistake and probably relates to another case. Unfortunately this has further reinforced Mr H's view that UKIL is not to be trusted.

In any event I'm satisfied that the adjudicator's recommendation of an additional £200 properly meets the needs of this case. In making that finding I take into account the fact that any accident where liability is disputed over a prolonged period of time is likely to be stressful for the driver concerned.

my final decision

I uphold the complaint. I require U K Insurance Limited to pay Mr H £200 in addition to the £70 it has already offered him for the trouble and upset its initial handling of his claim has caused.

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

Melanie McDonald
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