complaint

Mr F is unhappy with his former motor insurer, Pinnacle Insurance plc. He doesn't think it should have conceded liability for a negligence claim by a third-party pedestrian (which he regards as fraudulent). And he's annoyed that it set up another 'fault' claim under his policy even though the car involved in the (alleged) incident belonged to his father and was insured by another firm.

background

Following our adjudicator's assessment rejecting this complaint, Mr F requested a phone call with the ombudsman before we finally decided the case. I therefore called him on 21 December 2015 to discuss his case – and also agreed to let him have my decision in writing.

my findings

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

the first claim: 6 September 2014

As I explained to Mr F by phone, Pinnacle's decision to settle the third-party claim isn't automatically unreasonable just because he wasn't found guilty of careless driving by the magistrates' court when prosecuted for the incident (allegedly hitting a pedestrian on a pavement). The Crown has to prove guilt 'beyond reasonable doubt', which is a very high burden of proof. In other words, the criminal courts need to be satisfied so they're sure in order to convict – and in this case, the weight of the evidence cast enough doubt to result in an acquittal.

But in a civil claim, such as an action for personal injuries under the tort of negligence, the county courts apply a much lower standard of proof: 'on the balance of probabilities'. This means a claimant will succeed in his claim if the court is only 51% satisfied of the defendant's liability. It's a fairly low standard – and much easier for a civilian litigant to discharge than for the Crown in criminal cases. Accordingly, when Pinnacle was assessing the third party's claim, it had to take account of the lower standard of proof in civil cases and decide whether this was a case worth defending; or whether it would be more sensible to settle out of court (thereby saving costs).

The terms and conditions of a motor insurance policy usually give the insurer wide discretion on how to settle third-party claims. The policyholder doesn't have to accept the insurer's views on the proposed action's prospects of success – but if he doesn't, then he can't claim an indemnity under the policy and risks being held personally liable to the third party for damages, interest and legal costs. Whilst Mr F's policy excess in this case is very high (£3,000), this simply reflects his objective risk-profile as a young male driver. I explained to Mr F that withdrawing his insurance claim and defending himself wasn't without risk – and potentially could expose him to losses in excess of £3,000.

I can't substitute Pinnacle's assessment of legal liability with my own; indeed, it's not our role to determine civil liability in road-traffic actions. All I can do is assess whether Pinnacle's assessment was fair and reasonable; and within the range of reasonable responses (bearing in mind that predicting the outcome of litigation isn't an exact science). Given the

contradictory witness evidence—plus the innate disadvantage a motorist usually has if a collision with a pedestrian is involved—I can't conclude that Pinnacle's decision was inherently unreasonable or contrary to its contractual rights and responsibilities under the terms and conditions of the policy (which are designed to protect insurers from having to defend hopeless or disproportionately costly cases on points of principle or because a policyholder simply disagrees).

When making such decisions, insurers do take account of previous case law – and they do have access to expert legal advice on a case's in relative strengths and weaknesses. It's also important to bear in mind that insurers sometimes have to make difficult commercial judgments – and that might involve compromising a third party's claim irrespective of the underlying merits because of concerns about exposure to adverse costs—the loser often has to pay all the winner's costs as well his own—or a key's witness's reliability, credibility, availability, etc.

the second claim: 8 March 2015

Like the adjudicator, I can't see that Pinnacle did anything wrong as regards this claim. It appears that the witness (a neighbour) wrongly gave the third party the vehicle registration of Mr F's car rather than his father's. Both plates are personalised and somewhat similar insofar as four of the numbers/letters are the same. As a result, a claim was wrongly notified to Pinnacle rather than the insurer of Mr F's father. But that's not Pinnacle's fault. Indeed, it has a legal obligation under the Road Traffic Act 1988 not to ignore claims it receives from third parties.

I can't reasonably accept that Pinnacle erred just because its investigators weren't able to contact Mr F, which they tried three times using his contact details on file. Although Pinnacle did initially seek to recover its £330 outlay from Mr F, it's now agreed to drop that claim as a gesture of goodwill.

Mr F says that his father has settled the third party's claim privately. In the circumstances, Pinnacle has closed its file on the matter and isn't treating this as a 'fault' claim – so it shouldn't now affect Mr F's no-claims-discount or future premiums/risk profile. Indeed, as a result of our adjudicator's enquiries, Pinnacle has confirmed the following by email dated 22 October 2015:

> We do not send this information to any external database. Information will only be divulged externally if another insurer contacts us to confirm the claim history. I have today added a note to our system to state:
>
> 'Please note the claim from 08/03/2015 was recorded in error and incident actually involved a different vehicle belonging to [policyholder's] father. This claim should be disregarded in any discussion of this policyholder's claim history. JB 22/10/2015.'

In my judgment, that should be enough to satisfy Mr F that his name has been cleared in relation to this incident. If he needs documentary proof for another insurer, he can either contact Pinnacle directly for a confirmation letter – or send a copy of my decision.

In all the circumstances, whilst it's very unfortunate that Mr F is facing a £3,000 excess, I'm afraid that's merely an unavoidable consequence of a third party making a liability claim against him at a time when his overall risk-profile resulted in a high excess. (Premiums and excesses obviously tend to reduce as a driver gets older and more experienced – provided he hasn't been involved in lots of claims or accidents.) Mr F indicated to me that he wasn't

prepared to pay this excess. That's a matter for him, as the ombudsman service can't make awards *against* complainants. But if he does refuse to pay his excess without withdrawing his claim, I'm afraid he does risk Pinnacle taking legal action against him for breach of contract, which might affect his credit rating and/or ability to obtain future cover at a reasonable price or at all. Naturally, he would be free to defend any such action and let the court decide.

Finally, I explained to Mr F on the phone that I didn't think it was necessary to hold an oral hearing in order fairly to decide this insurance dispute. And I didn't feel it would be appropriate for me to meet him in person—as requested—without the other side being present to put its version of events to me. We do make it clear to potential complainants from the outset that our procedures aren't the same as in court and are normally just paper-based.

my decision

For the reasons explained over the phone and above, I'm unable to uphold this complaint against Pinnacle Insurance plc. I am sorry to disappoint Mr F.

Under the rules of the Financial Ombudsman Service, I'm required to invite Mr F to accept or reject my decision before 22 January 2016.

Mark Sceeny
ombudsman