

complaint

Mr H complains that Liverpool Victoria Insurance Company Limited (LV) prejudiced his court case for a claim made under his motor insurance policy. He wants a refund of the higher premium he is now paying, a refund of his repair costs and his costs for attending court.

background

Mr H's son, a named driver on his policy, was involved in a car accident. He thought that he wasn't at fault. Photos of the accident damage were submitted to LV. The claim proceeded to court however LV didn't provide all the photos to the court. Although a request was made to the court for late evidence, this wasn't accepted. The court dismissed Mr H's claim. He feels that the fact that the photographs weren't provided caused this dismissal.

LV agreed that the photos hadn't been sent. It felt that the photos wouldn't have provided assistance. But it agreed to mark the claim as non-fault because of this and allowed the no claims discount (NCD). It also reimbursed Mr H's repair costs, less the policy excess, with no effect on the policy. Mr H doesn't accept this as he would have been able to claim costs, as a witness, had the court found in his favour.

Our adjudicator didn't recommend that the complaint should be upheld. She obtained a copy of the advocacy report completed by the solicitors. It said that the judge didn't agree with the named driver's version of events and dismissed the complaint on this basis. Because of this, whilst she agreed that LV should have submitted all the evidence, she didn't feel that it had prejudiced the claim. She didn't consider any further compensation was required.

Mr H replied that the adjudicator had prejudiced his complaint against the solicitor by obtaining a copy of the advocacy report. He said her assessment shouldn't have considered that report. He clarified that LV had sent one of the photos to the solicitor but the solicitor failed to submit the photo as evidence. He said that even if the second photo had been sent to the solicitor, the solicitor wouldn't have submitted it as evidence. He asked for a review on the exact circumstances of the complaint.

my findings

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

I can understand that Mr H was disappointed that his case wasn't successful in court. He says that this was because LV didn't forward the photos of the damage to both cars to its solicitors. I understand that Mr H has raised a complaint about the solicitors but I'm unable to comment about that.

Mr H is adamant that his son wasn't at fault for the accident. The adjudicator has already explained that it isn't our role to decide who was responsible for causing the accident. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate if the insurer acted fairly and reasonably.

From its file, I can see that LV thought that it had a reasonable chance of success in defending Mr H's claim that his son wasn't at fault for the accident. It agreed to take the case to court, which would incur costs. But the judge found for the other driver.

Mr H thinks the missing photos would have made a difference to the outcome. LV had an engineer examine the photographs. He gave an opinion that they wouldn't have supported Mr H's son's version of event. I can't see that Mr H has provided expert engineering advice to counter this view.

LV has agreed that it didn't send all the photos to its solicitors. However, it didn't think that these would have made a difference to the court case. It said that there was never any debate regarding the area of damage to the vehicles and the judge was aware of the damage. It said that the judge ultimately thought the other driver's version of events was more likely.

From the advocacy report, I can see that it thought it was Mr H's son's testimony, rather than the lack of photographic evidence about the damage caused, that led the case to be dismissed.

Mr H says that the advocacy report is biased, but I haven't seen evidence to show this. He also says that our adjudicator has prejudiced him by obtaining the report. But I think that she made it clear to Mr H that she was seeking the report in order to form her opinion and he didn't object to this.

I think that LV should have sent all the photos to its solicitors for them to consider. It didn't do this but I can't see evidence that this would have altered the outcome in court.

LV agreed that it hadn't managed Mr H's expectations in relation to the outcome of the court case. As a consequence, it allowed his NCD for the claim, even though the court case held his son at fault for the accident. LV has refunded Mr H the repair costs for his car, less the excess. I think this is reasonable as it restores Mr H's position.

Mr H also sought the costs he incurred when attending court. But as the evidence suggests that the claim would have been unsuccessful even with the photos, I don't think that LV should pay Mr H any further compensation.

my final decision

For the reasons I've discussed, it is my final decision that I don't uphold this complaint.

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.

Phillip Berechree
ombudsman