

complaint

Mr W complains that CIS General Insurance Limited ("CIS") wrongly held him responsible for a collision when a third party claimed on Mr W's CIS motor insurance policy.

background

In August 2014, Mr W had a collision with another car. The third party's insurer notified CIS and said the third party held Mr W responsible for the accident, because Mr W had merged into the left hand lane from the right hand lane without keeping a proper lookout. CIS wrote to Mr W telling him this, and asked him to complete and return statement/diagram forms, which he did at the beginning of September.

Mr W's statement said:

"The road goes from two lanes into one about 200-300 yards from the lights. I looked in my left hand mirror and there was no sign of any car on my n/s. The next thing I know he had collided with the near side of my car. He came out of nowhere. The position of my car in the road still gave him enough room to miss me but he just drove into the side of me..... He knew exactly what he was doing when he drove up the inside of me."

After reviewing Mr W's statement and diagram, CIS told Mr W that as he had changed lanes and collided with the other car, it was going to accept liability for the accident.

In November 2014, CIS received a letter from Mr W saying he hadn't changed lanes, and felt strongly that the accident wasn't his fault. However CIS, having reviewed the road markings, said that the lane he was in was going to merge with the right hand lane, and it was his responsibility to ensure it was safe to merge with the left hand lane. So it rejected his complaint.

Our adjudicator didn't recommend that this complaint should be upheld. She said it wasn't for this service to decide who had caused the accident, but to consider whether CIS acted fairly and reasonably, and in line with the policy terms and conditions, when it decided to settle the claim.

The policy contained a condition which allowed CIS to take over, defend or settle a claim as it saw fit, and whether Mr W agreed with its decision or not. The adjudicator considered that CIS had reviewed all the evidence available, including what both parties had said, the road layout, and the damage to the third party's car. She thought that CIS exercised its right to settle the claim fairly and reasonably.

Mr W responded to say, in summary, that:

- the third party came up on Mr W's inside. There were parked cars ahead of him. He was going so fast that he had nowhere else to go except into the side of Mr W's car,
- Mr W didn't merge into the left hand lane,
- CIS had never asked for a report on the damage to his car,
- the damage to both cars was equally consistent with the third party running into Mr W, as Mr W running into the third party,
- the third party had undertaken him on zig-zag lines to a pelican crossing, and was also chasing friends in two cars in front.

my findings

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

As the adjudicator has said, it is not for this service to decide who was at fault for the accident, but whether CIS acted fairly and reasonably, and according to the policy terms, when, in September 2014, it accepted liability to the third party under the policy.

I have set out above the relevant parts of Mr W's statement in September 2014, on which CIS based its decision to accept liability. Given the road layout, it was the responsibility of traffic in the right hand merging lane to make sure it was safe to do so before merging into the left hand lane. The crucial question, therefore was whether at the time of the collision Mr W had moved into the left hand lane, as the third party said.

CIS took Mr W's statement to accept that he had moved into the left hand lane. He says he had checked his mirror and there was no sign of any car on his nearside. The next thing he knew the third party had collided with his near side. He came out of nowhere. The position of Mr W's car in the road still gave the third party enough room to miss him, but he just drove into the side of Mr W's car.

Mr W has since said that there were cars parked in the left hand lane ahead, so the third party had to move out and so collided with him. He has also suggested that the third party was driving fast to catch up with his friends in cars ahead. However he didn't mention these matters in his statement in September 2014.

Based on the information it then had, I conclude that CIS acted fairly and reasonably, and in line with the policy conditions, when it decided in September 2014 to accept liability under the policy for the collision, and communicated this to the third party's insurer

my final decision

My decision is that I don't uphold this complaint, and make no order against CIS General Insurance Limited.

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

Lennox Towers
ombudsman