

complaint

Mr M complains about the way UK Insurance Limited ("UKI") handled the claim he made under his car insurance policy.

background

I considered the complaint and issued a provisional decision as below –

Mr M was involved in an incident whilst driving his car along a main road with a filter lane, enabling vehicles to turn right into a petrol station. The incident caused damage to Mr M's car on the rear driver's side.

Mr M stated he was travelling at low speed behind a white van which passed along the main lane between the pavement and a HGV, which was waiting to turn right. Mr M then went through the same gap and the HGV began its manoeuvre into the petrol station, making contact with Mr M's rear driver's side.

The car was damaged but driveable so Mr M completed his journey to his work place, which was roughly ten minutes from the scene of the incident. Mr M said his reasons for not stopping were due to him being unaware of the extent of the damage and he was close to his work place. The registration plate was taken by Mr M immediately after the incident. Mr M informed UKI of the incident and considered the HGV was at fault as it collided with his car. When UKI contacted the HGV's insurer they stated the driver had no recollection of the incident.

UKI were informed by Mr M CCTV was available, which was requested by UKI, but not chased up. Mr M complained that UKI prejudiced his position by not gathering the CCTV footage as this would clearly show the third party driver of the HGV was at fault. UKI offered to pay Mr T £150 compensation for not chasing the CCTV footage but this was declined by him.

Our adjudicator recommended the complaint should be upheld. He did not consider UKI had carried out a reasonable investigation as it did not pursue the CCTV footage with the petrol station.

Furthermore, he considered UKI had prejudiced Mr M's position in deciding liability and recommended it should do the following to put things right:

- Refund the £500 policy excess Mr M paid*
- Treat the claim as non-fault*
- Remove the fault claim recorded on any external database*

UKI disagreed with our adjudicators findings. It agreed it could have acted quicker but considered the CCTV footage from the petrol station was very unlikely to have helped in this instance.

Furthermore, it considered Mr M did not take reasonable care by not adhering to the Highway Code. It remains of the opinion a 50/50 liability split would be fair in this instance.

As a resolution has not been agreed, the case has been passed to me.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

As our adjudicator explained that we do not decide which driver is responsible for causing an accident. We can only consider if the insurer dealt with a claim fairly.

From Mr M's submissions, he did not stop and continued his journey to his place of work, meaning the HGV driver was unaware of the contact between the two vehicles and had no opportunity to discuss fault. It was also Mr M's decision in driving forward and that the gap was wide enough, presumably having seen the HGV and knowing it was turning. Neither of these aspects helps Mr M's case. I do accept Mr M said he was in shock, but I am unsure how he managed to take the HGV number and drive on if this was the case, and can see why UKI have taken the view they have.

It is not disputed UKI failed to chase the CCTV footage from the petrol station when assessing the claim. However, from Mr M's summary of events, I am not persuaded that had UKI gathered the CCTV footage, this would have resulted in it settling the claim in his favour. The £150 on offer is sufficient to cover the service aspect of not chasing the footage.

Based on the evidence provided, I am currently satisfied UKI was not unfair in reaching its decision on liability.

my provisional decision

For the reasons I have explained, but subject to any further information or evidence I might receive from either Mr M or UK Insurance Limited by 19 June 2015, my provisional decision is I do not uphold this complaint. I make no award against UK Insurance Limited.

UKI responded by saying that it had no further comments to make.

Mr M stated that he felt the gap wasn't tight in passing the HGV before it turned. And that if the driver had used his mirrors he would've waited before executing the turn into the garage.

He's clarified that at the time of the accident he was in shock and didn't note down any of the HGV's details at the time. He noticed the HGV had a store logo and he got the details from them at a later date.

Mr M said that his insurance was suspended until he had a new car. He said that he drove his old car for a few days while he was waiting for the new car and feels that this could've led to a 'catastrophic' outcome.

Finally, he felt his claim had been prejudiced because there would've been proof of the accident from the CCTV images. He said that UKI could've done more to chase this evidence.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I appreciate that Mr M feels the HGV driver was at fault for the accident and that he was in shock to the extent that he didn't stop at the time to discuss fault with the driver. In these sorts of instances though it becomes very difficult for an insurer to decide liability in one side's favour if notes haven't been exchanged at the time of an accident.

Also, if the HGV was turning and clearly doing so the HGV's insurer may well have expected Mr M to make allowances for this in judging any clearance gap, again complicating liability. Faced with these issues I do not think I can find in Mr M's favour, or accept that any CCTV footage would definitely have made a difference. He has undoubtedly received poor service from UKI but I don't think this is enough to prove this should be a no fault claim.

my final decision

My final decision is that I do not uphold this complaint. I make no award against UK Insurance Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 15 July 2015.

Christopher Tilson
ombudsman