

## **complaint**

Mrs C complains that Ageas Insurance Limited hasn't recovered her excess after she was in an incident and a claim was made on her motor insurance policy. She's unhappy that Ageas said she would be considered at fault for the incident and it won't take the matter to court.

## **background**

Mrs C was in an incident with another driver. She told Ageas that she'd moved slightly into his lane to let a police car pass and they'd collided. She later said he'd moved into her lane. She said the police told her that the other driver was to blame. Ageas tried to press the other driver to accept liability, but without success. It thought that if the matter went to court then it would lose. So it didn't pursue the other driver further. It held Mrs C responsible.

Our adjudicator didn't recommend that the complaint should be upheld. He thought Ageas had reasonably considered the evidence available. It was entitled to settle the claim as it thought fit.

Mrs C replied that Ageas hadn't considered all the evidence. She said the other driver wasn't now making a claim for repairs. She thought this showed he was at fault.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. But Mrs C will be disappointed that I'm not able to uphold her complaint. I'll explain why.

I can appreciate Mrs C's frustration that she is being held at fault for the incident. I can see she's adamant that she wasn't to blame. She had her car repaired by Ageas and this meant she had to pay her excess. I can understand that she would want this back.

Mrs C is adamant that the other driver was at fault. But it isn't our role to decide who was responsible for causing the incident. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate how the insurer made the decision to settle the claim. Did it act fairly and reasonably and in line with the terms and conditions of the policy?

The adjudicator has explained that Ageas is entitled under the terms and conditions of its policy with Mrs C to take over, defend, or settle a claim as it sees fit. Mrs C has to follow its advice in connection with the settlement of her claim. This is whether she agrees with the outcome or not. This is a common term in motor insurance policies. Insurers are entitled to take a commercial decision about whether it is reasonable to contest a third party claim or better to compromise.

When Mrs C first reported the incident to Ageas it recorded the call. Its records show that it listened to this call several times when Mrs C challenged its actions. I've looked at its notes. These show that Mrs C said on several occasions that she'd moved slightly into the other driver's lane. Mrs C later disputed this and gave a different version of events. But I think it's reasonable for Ageas to rely on her first call as this was closer to the event and more likely to be an accurate recall of what happened.

The other driver called Ageas and gave his version of events. This was similar to Mrs C's first version.

Mrs C said she'd called the police and described the incident. She said she was told that the other driver was at fault for not giving her room to let the police car pass. But these police weren't witnesses to the incident. I don't think this is relevant.

Mrs C was told that the police car may have recorded the incident on its dashboard camera. Ageas asked her to get a police reference so it could request a copy. But I can't see evidence that Mrs C did this.

Ageas initially pressed the other driver to accept liability, but he wouldn't agree. So it reviewed the case and the evidence available. It decided, based on its experience, that if the matter went to court Mrs C would be held at fault. So it recorded a fault against Mrs C and didn't pursue the other driver further.

I think it made this decision after reasonably considering the evidence available. I know that Mrs C disagrees, but I think it's entitled to make this decision by the policy terms. I don't think it's done anything wrong.

Mrs C didn't get the other driver's registration number. So Ageas didn't know his insurer. But as it held Mrs C at fault, it didn't need these details in any case. The other driver said he wasn't making a claim because his repairs were less than his excess. This was his decision. I don't think it has any bearing on Mrs C's claim or the question of liability. I don't think this shows he was at fault.

Mrs C said she has legal expenses cover. If she wants to pursue the matter of liability further, then I think it's for her to discuss this with her broker.

### **my final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 19 May 2016.

Phillip Berechree  
**ombudsman**