

The complaint

Mr S is unhappy with how Alwyn Insurance Company Limited (Alwyn) has handled and recorded a claim under his motorcycle insurance policy.

Any reference to Alwyn includes its agents.

What happened

In August 2022, Mr S took out a motorcycle insurance policy. The underwriter of the policy is Alwyn.

In May 2023, a third-party insurer contacted Alwyn about an incident that took place in April 2023. They said Mr S was at fault for the accident and he'd caused damage to another driver's car. They said Mr S tried to squeeze between two cars at a set of traffic lights and the other driver's wing mirror was damaged.

Alwyn contacted Mr S about the alleged claim and asked him to confirm whether he was involved in the incident and whether it occurred as alleged. Alwyn asked Mr S to respond by 16 June 2023 at the latest.

Mr S sent Alwyn a response on 6 June 2023 and completed an 'Accident Repair Form'. He said he had no recollection of the incident or what had happened.

Alwyn received an engineer's report showing evidence of the damage to the other driver's car and also the cost of the repair. It subsequently received dashcam footage showing what happened on the day of the alleged incident.

Based on the information, Alwyn made the decision not to defend the claim and settled it on the best possible terms to avoid litigation. It said based on the dashcam footage, it was confident it could not defend the claim. The claim was recorded against Mr S's policy with no admission of liability.

Mr S remained unhappy and brought his complaint to this service. He said he has no knowledge of the incident and the footage that he was sent has no evidence that he had damaged the wing mirror. He wanted the claim to be cleared from his policy and for his 'no claims discount' to be reinstated.

Our investigator looked into Mr S's complaint and upheld it. She thought Alwyn didn't reach a fair decision based on evidence provided by both parties and she didn't think the dashcam footage provided evidence that Mr S damaged the wing mirror – only that he was present at the time.

Alwyn disagreed with the investigator's assessment. It said, on the balance of probabilities, it's more likely than not, that the incident occurred as alleged by the other driver. This was a case with no reasonable prospect of success, and it stood by its decision to accept the claim in the way it did.

Alwyn also sought legal opinion and provided this to us as further evidence that there was no reasonable prospect of success. It asked for the case to be referred to an ombudsman.

So, it was passed to me.

I issued a provisional decision which said that I didn't intend on upholding Mr S's complaint. I said the following:

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

It's not my role, or the role of this service, to decide if Mr S was responsible for the alleged incident or if the other driver's claim is genuine. What I've needed to decide is whether Alwyn has acted fairly and reasonably and in line with Mr S's policy terms and conditions.

On page 9 of Mr S's policy terms, it says Alwyn has 'full discretion in the conduct of, proceedings and the settlement of any claim.' Similar provisions are found in most motorcycle policies, so I don't find this to be unusual.

Alwyn said it decided to settle the claim after reviewing the dashcam footage. It said the allegation from the other driver was that at a set of traffic lights, Mr S squeezed between two cars (one of which was the other driver) and scratched the wing mirror of his car. An estimate was provided for the damage to be repaired. By the time Mr S had responded, Alwyn had received the dashcam footage which it reviewed. A decision was then made to make the payment.

I've reviewed the footage. I've also looked at all the evidence provided. I appreciate that Mr S says he has no knowledge of the incident. That's possible, because looking at the footage, there was no attempt to stop after he squeezed between and passed the two cars. So, if he had knowledge of what had happened, it's more likely that he would've stopped or hesitated.

While I appreciate Mr S's point, this isn't what's being looked at here. The dashcam footage shows Mr S being there at the time of the alleged incident. The dashcam footage has sound and the other driver makes a comment 'oh, come on' at the same time as Mr S squeezes between the two cars. So, even if Mr S didn't realise what had potentially happened, that doesn't necessarily mean that the damage didn't happen. Based on the footage, I'm not persuaded that Alwyn has made an unfair decision not to defend the claim. Alwyn has based a decision on what's evident on the dashcam footage and I don't think that's unreasonable.

I note that Mr S has said his motorcycle was never inspected by Alwyn to see if damage was caused by him. I agree, this is something Alwyn could have done. But, even if it had, the damage could have been caused by his arm or elbow or another body part and not necessarily by the motorcycle itself.

The terms of the policy allow Alwyn to make a decision about whether to settle a claim or dispute it. Given what can be seen on the dashcam footage, and that it places Mr S at the alleged incident, I don't think Alwyn's decision to settle the claim was unreasonable. As an insurer, Alwyn is likely to have experience of how the matter would be viewed if it went to court. In a civil court, the matter would be decided on balance of probabilities, rather than 'beyond reasonable doubt'.

I can see Alwyn sought legal opinion on this claim which also confirmed that it would be difficult to defend this claim were it to go to court. Alwyn has to balance the evidence and the costs involved if the case went to court and the likely prospect of success.

Overall, I think it's reasonable for Alwyn to settle the claim as it did based on the balance of probabilities. I know Mr S feels strongly about how the claim has been handled and I know my answer will be disappointing for him. But I think Alwyn acted fairly and reasonably and in line with the policy terms and conditions. I don't intend to ask Alwyn to do anything further.

Alwyn didn't respond to my provisional decision.

Mr S responded with some comments but said he would still provide his full response. However, he didn't do so thereafter. Mr S says he is a victim of an insurance scam. The dashcam footage clearly shows him just passing the vehicle. Also, his hospital and GP records will show that he didn't attend either after the incident. And he says he will lose a lot of money; his mental health has deteriorated since the incident, and he's had to take time off work.

What I've decided – and why

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

I've also reviewed the comments Mr S has provided. Having done so, I see no reason to depart from the outcome in my provisional decision. I've considered everything and, I don't think the further comments provided by Mr S make a difference to the overall outcome.

I have empathy for Mr S's situation and understand that he's been through a very difficult time. And I know that he will be disappointed, but overall, I can't reasonably ask Alwyn to change the outcome of the claim. As I explained, Alwyn has settled the claim based on the balance of probabilities and that's in line with the policy terms and conditions. I think this is fair and reasonable in the circumstances. It therefore follows that I don't require Alwyn to do anything further.

My final decision

For the reasons given above, I don't uphold Mr S's complaint about Alwyn Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 April 2024.

Nimisha Radia
Ombudsman