

## **complaint**

Mrs W complains that CIS General Insurance Limited wrongly accepted liability, and settled a third party claim, under her motor insurance policy.

## **background**

In January 2012, Mrs W's son, Mr W, was involved in a collision while driving her car. He says that while he was stationary at the give-way lines, waiting to come out of a side road, a motor cycle collided with him. Mr W says the third party seemed to swerve towards him and collided with the right front corner of the car.

Mr W considered that he was in no way at fault for the accident. However, the third party's insurer said that Mr W had emerged from the side road into the side of the third party's passing motor cycle on the main road. It therefore held Mr W entirely responsible for the accident, and said it would issue court proceedings if CIS did not accept liability.

Mrs W told CIS she did not want it to accept any liability for the accident. However, following investigations, CIS concluded that Mr W would have needed to have passed the give-way lines for the accident to occur. It considered he would be likely to be found at fault in any court proceedings, and so settled the third party's claim on that basis.

Our adjudicator did not recommend that this complaint should be upheld. She considered that CIS had considered Mr W's version of events, but it had concluded that in court proceedings it would not have been possible to obtain a 100% recovery in Mrs W's favour. So the claim would always have been shown as a "fault" claim on Mrs W's insurance record.

CIS was entitled under the policy terms to settle a claim at its discretion. She considered that it had acted reasonably in this case in deciding to accept, and pay, the third party's claim. It had settled on a "without prejudice" basis, so that Mrs W was free to take proceedings herself against the third party, if she wished to do so.

CIS had acknowledged that it had provided poor service to Mrs W in a number of respects during its handling of the claim. It had offered Mrs W compensation of £100 for the distress and inconvenience this had caused, which our adjudicator considered fair.

Mrs W responded to say, in summary, that:

- the third party driver had not given a statement to his insurer, and was not now contactable. So if the case had gone to court, the third party would have had no evidence to support its claim that Mr W was to blame for the collision; and
- there was no evidence to suggest that Mr W was at fault, and so CIS' investigations and conclusions were flawed.

## **my findings**

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

It has already been explained to Mrs W, and Mr W, that this Service does not decide liability – we will just consider if CIS did a proper and reasonable investigation. In court, the onus would be on Mr W to prove on balance that the third party swerved and hit his car, as opposed to his car pulling out and hitting the third party motor cycle.

In Mr W's statement, he said, "...The junction would have been a blind turning for me due to the van..." and then "...the motorcycle came out from behind the van...he seemed to swerve towards us & collided with the right corner of the car...". The third party's insurers (on behalf of the third party driver) in contrast said, "...your insured failed to ensure their intended route was clear and emerged from a side road directly into the side of our insured's passing vehicle causing damage...".

When CIS considered the evidence Mr W had produced, it considered there was a discrepancy between the diagram on his statement, and the photos he took at the time. The van which he says obstructed his view from the side road was not parked out on the carriageway of the main road, but in a lay by. Its offside was level with the edge of the carriageway and the give-way lines of the side road.

In CIS' view, the significance of this was that that the motorcyclist's path along the main road was unobstructed, and if Mr W was stationary behind the give-way lines it was unlikely that the motorcyclist lost control on a straight road and swerved into Mr W's car.

CIS had to consider all of this along with the prospects of fighting the matter in court. CIS used its professional judgement and decided that, even in the absence of direct evidence from the third party driver, it would not win the case in court. I do not find this decision to have been unreasonable.

I know there was mention at one stage of a possible 50/50 liability settlement. However, it is worth noting that whether a claim is settled on a 100% fault or a split liability basis, it will still count as a 'fault' claim and be taken into account with regard to a policy holder's no claims discount ('NCD') and premium. The file shows CIS did try to settle on a 50/50 basis but this was rejected by the third party's insurers.

I appreciate Mrs W's concern about CIS's general handling of the claim, but I consider the £100 offered for this to be sufficient in the circumstances.

### **my final decision**

For the reasons I have set out above, my decision is that I order CIS General Insurance Limited to pay Mrs W compensation of £100.

Lennox Towers  
**ombudsman**