

complaint

Mr D is unhappy with The Society of Lloyd's (SoL) about how his claim for a motorcycle accident was settled. Liability for the accident was recorded against Mr D and he feels SoL should have defended him – it hasn't shown him the duty of care, the level of expertise which he was entitled to and has inappropriately attributed responsibility to him for the accident.

Specifically, Mr D would like this service to:

- Examine the evidence properly,
- Correct the mistakes made by SoL solicitor;
- Commission an independent accident report covering both his damaged motorcycle and the accident site, in order to establish properly where the responsibility for the accident lies. Given the history of the case, the choice of accident investigator would need to be appointed independently by the ombudsman or agreed with him as he doesn't trust SoL to appoint an independent investigator;
- The accident investigation would need also to take into account the independent views of a police class 1 motorcyclist to determine whether his behaviour was appropriate or not;
- Settle his damaged equipment and medical costs with no further delay; and
- Consider prosecuting the other party for insurance fraud.

background

Mr D had an annual motorcycle insurance policy which started on 16 December 2016.

On 14 August 2017, Mr D was involved in a road traffic accident and collided with a car. He was thrown off the motorcycle and was left unconscious. He has no memory of the accident. The third party driver and an independent witness stopped and provided their details. Following the incident being notified, an investigation took place to decide who was liable for the accident. Both Mr D and the third party driver provided a statement and a further statement was provided by the independent witness (a car driver who was behind Mr D at the time). The information was reviewed and SoL decided not to defend liability on behalf of Mr D as there wasn't a realistic prospect of successfully defending the claim.

Mr D was unhappy with the decision SoL made not to defend him and made a complaint to it. SoL said Mr D's own solicitors had also raised concerns with regards to the prospect of claiming. It also confirmed that the settlement didn't prejudice Mr D and if he was able to make a successful claim in the future in regards to this incident, it would re-instate his 'no claims discount'. SoL further said Mr D was unconscious at the time of the accident and as he wasn't able to provide a complete statement, this made it more difficult to defend him. It referred Mr D to the terms and conditions of the policy and confirmed its right to take action to settle liability and Mr D must cooperate with the action taken by SoL.

Mr D referred his complaint to this service. Our investigator looked into it and didn't uphold the complaint. He said SoL acted fairly and reasonably in deciding liability on this case as it relied on the advice of its solicitors to settle the case rather than go to court. Mr D didn't agree with the investigator and has asked for an ombudsman make a decision. So the complaint has been to me.

In summary, Mr D says:

- We haven't anywhere in our adjudication covered his actual complaint, i.e. that SoL ignored evidence that was freely provided to it in good faith;
- His complaint is against the complicit and dishonourable, if not fraudulent, behaviour by both parties and we have not covered that aspect;
- As a customer, paying an insurance premium, he doesn't expect his insurers to knowingly ignore the facts of the case which they did in this case. This is the substance of his case; and
- He would like us to actually investigate his complaint rather than a fictional complaint that I did not specifically make.

my findings

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

Firstly, I'd like to explain what this service can and can't do when looking at these types of complaints.

Our service doesn't decide who's at fault for an accident, as that's the role of the courts. But we do check to see if an insurer has looked into things fairly and made a reasonable claims decision. Like all such policies, the terms and conditions of the insurance contract give

SoL sole discretion to decide whether to settle or defend a claim; and we would only interfere if we thought SoL had exercised this discretion in an arbitrary, irrational or unfair way. I don't regard that sort of term as inherently unreasonable — because insurers usually have greater experience of how a court is likely to determine legal liability; and they also have a legal duty under the Road Traffic Act 1988 to meet any third-party judgment against their insured, so it's not unreasonable for them to try to mitigate costs. Further, there are public policy considerations to take account of: civil litigation is not without cost to the taxpayer (because of the cost of running the courts) — so the courts shouldn't be clogged with unnecessary cases that insured parties could reasonably resolve directly.

I would also like to confirm that it's not our role and not within our remit to look at complaints about solicitors not investigating the incident or the police not having an up to date file record from the accident. If Mr D is unhappy about these aspects of his complaint, our investigator has already explained that Mr D will need to direct this to the relevant organisations.

In terms of this complaint, Mr D has provided a lot of information to us. I've reviewed this and, mainly, this refers to evidence he has put together, through his own time and research. He said this evidence proves that he was not at fault. So while I appreciate the time it's taken for him to put this information together, I must reiterate that it's not my function to assign legal liability for the accident.

Based on what we can look at, the key point I need to decide on this case is whether SoL ignored the evidence from Mr D and whether it settled the claim fairly in the circumstances of this complaint.

I've started by looking at the terms and conditions of the policy. Under the General conditions section of the policy, it states:

"7. We can:

- take over, carry out, defend or settle any claim; and*
- take proceedings (which we will pay for, and for our own benefit) to recover payment we have made under this insurance.*

We will take this action in your name or in the name of anyone else covered by this insurance

You, or the person whose name we use, must co-operate with us on any matter which affects this insurance."

Based on the above, SoL is contractually entitled to settle the claim and decide liability on Mr D's behalf in return for providing him with an indemnity. If Mr D disagreed with SoL's proposals on liability, it was open to him to withdraw his claim and take upon himself the risk of suing the third party (or defending a like claim against him). But so long as he wanted the peace of mind of insurance cover, he was bound to follow SoL advice on liability and whether or not to compromise.

I have seen nothing to suggest that SoL reached its decision in an arbitrary or unfair way. On the contrary, it relied on the available evidence and independent expert opinion. SoL believed there was a reasonable chance that Mr D could have been held liable. This is not surprising, as it will have known — from similar cases (both from law reports and its own

experience) — that courts do often find in favour of motorcyclists because they are less visible and more vulnerable than cars. So it decided on the most appropriate and commercial way to settle the claim. That doesn't seem unfair to me in the circumstances of this case. Ultimately there was no persuasive evidence to hold the third party liable or even settle the claim on a 50/50 basis.

I appreciate that Mr D has provided evidence of his own and he can't understand why all of this hasn't been taken account of. But it's well-established in law that a person can't be an independent expert witness in his own cause. His own evidence was never going to be as persuasive or weighty as that of a truly independent witness. Mr D feels the evidence he has provided wasn't taken into account, I don't agree. The difficulty for SoL was that Mr D was unconscious at the time of the accident and therefore in terms his own recollections, these were limited insofar as what happened at the time of the accident.

I have to look at the difficult decision SoL needed to make at the time, not what we know subsequently happened with the benefit of hindsight. And I am satisfied that its decision not to defend Mr D was a reasonable potential outcome for such a case.

In all the circumstances, I'm satisfied that SoL made reasonable attempts to find out who was at fault. It relied on the advice of its solicitors and as such decided that it would take liability on Mr D's behalf which is within its right under the policy terms and conditions. So in terms of settling the claim, I don't think SoL acted unfairly or unreasonably. It follows that I don't think Mr D is entitled to recover his uninsured losses from SoL or the third party. I note though that SoL has said the settlement didn't prejudice Mr D and if he was able to make a successful claim in the future in regards to this incident, it will re-instate his 'no claims discount' and recover any uninsured losses. I think this is reasonable.

I know Mr D will be disappointed with the decision and I appreciate the time and effort he's put into this complaint. We're unable to look into investigating the whole incident as Mr D has asked us to. This isn't within our remit and would be something a court would undertake. However, given that SoL has already sought advice from its solicitors and Mr D's own solicitors confirmed the likely prospect of success wasn't realistic, it's up to Mr D to decide whether he wants to pursue this separately.

Overall, given Mr D wasn't able to recollect the incident and there were two statements confirming Mr D hit the car in front (the third party's), the chances of successfully defending the claim wasn't realistic. As such, SoL made a decision to apportion all of the liability to Mr D as it's entitled to do so. I've seen nothing to persuade me that SoL acted inappropriately or treated Mr D unfairly in the circumstances of this complaint. I don't think SoL needs to do anything further.

my final decision

For the reasons given above, I'm not upholding Mr D's complaint against The Society of Lloyd's.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 17 August 2019.

Nimisha Radia
ombudsman