

## **complaint**

Mr H complains about how Liverpool Victoria Insurance Company Limited (LV) handled a claim made under his motor insurance policy. He wants a full refund of his excess and for LV to remove the fault claim from his record.

## **background**

Mr H was involved in an accident with a motorcycle. When he reported the incident to LV, he disputed liability from the beginning. LV charged Mr H his full excess of £400. Mr H said that LV didn't tell him about the outcome of his claim until he pressed it. LV then told him that it had negotiated a 50/50 settlement with the other driver's insurer. But it had already closed the claim and not yet refunded half of Mr H's excess.

Our adjudicator didn't recommend that the complaint should be upheld. She thought that LV had negotiated liability with the other driver's insurers in Mr H's best interests. This was because the other driver had an independent witness to support her account. LV thought it unlikely that it could successfully agree 100% liability in Mr H's favour. LV agreed that it made a mistake in closing Mr H's claim without telling him. It paid him £100 for his distress and inconvenience. It also returned half of Mr H's excess that was owed to him, with interest. The adjudicator thought that this was fair and reasonable.

Mr H replied that the adjudicator hadn't considered the Highway Code. He said that he couldn't be held liable for an accident if the other driver was driving illegally.

## **my findings**

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

I can understand that Mr H feels aggrieved that he is being held partly to blame for this accident. He says the police have told him that the motorcyclist was driving without due care and attention. Yet LV settled the claim 50/50. I can understand that he feels unjustly treated.

The adjudicator has already explained that it isn't our role to decide who was responsible for causing the accident. 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?

Also, I think that LV is entitled under the terms and conditions of its policy with Mr H to take over, defend, or settle a claim as it sees fit. Mr H has to follow its advice in connection with the settlement of his claim, whether he agrees with the outcome or not. This is a common term in motor insurance policies and I don't find it unusual. Insurers are entitled to take a commercial decision about whether it is reasonable to contest a third party claim or better to compromise.

I have read LV's file. I can see that it first thought that Mr H would be held fully liable for the accident as he pulled out in front of the motorcyclist. I can see that it looked at the evidence available. There were engineer's reports and witness statements. It considered that the motorcyclist was filtering along hatched lines, but didn't consider this to be illegal. The police didn't prosecute the motorcyclist for illegal actions.

LV considered the evidence from the independent witness. Mr H's daughter, who was present, wouldn't be regarded as independent by a court. So it couldn't consider her evidence.

LV then thought that it wouldn't be able to show that Mr H wasn't in any way at fault for the accident. It thought that a 50/50 settlement was a good result. So I think that LV did give fair and reasonable consideration to the evidence available in making its decision to settle the claim. I don't think it made an error and I don't think it should remove the claim from Mr H's record.

Mr H wants a full refund of his excess. But I think that the excess is the first portion of a claim that isn't covered by the insurance policy. This is always payable regardless of the circumstances of the incident. I don't think it's unreasonable for LV to charge Mr H 50% of this as it settled the claim 50/50. I don't think it should refund anything further.

Mr H's annual premium has unfortunately been affected by the claim. As his no claims discount (NCD) was protected this wasn't affected. But the fact that he had a claim has been taken into consideration. This would be the case whether the claim was recorded as a fault claim or non-fault claim. This is standard industry practice. I don't think LV has done anything wrong.

LV has agreed that it made mistakes in not telling Mr H that the claim was settled 50/50 and closed and in not repaying him half his excess until he pressed it. It has apologised for this and paid Mr H £100 compensation and interest on the excess, which I think is reasonable.

### **my final decision**

For the reasons I've discussed, it is my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr H to accept or reject my decision before 19 October 2015.

Phillip Berechree  
**ombudsman**