

complaint

Mr B complains about how Gefion Insurance A/S settled his motorcycle insurance claim.

background

For ease, in my decision I will refer to Gefion when talking about their agents or representatives and Mr B when talking about his.

Mr B had motorcycle insurance with Gefion. In February 2018 he was involved in an accident. He was filtering past traffic when the driver of a car, travelling in the same direction, decided to turn right into a driveway in order to turn around. Mr B's motorbike collided with the driver's side of the car causing damage to both vehicles.

Both the car driver and Mr B denied liability for the accident. To avoid delays to the repair of his motorbike, Mr B claimed on his policy with Gefion for the damage to his motorbike and left them to deal with the claim from the car driver.

In April 2019, Gefion settled on a 50/50 basis, which meant they paid 50% of the car driver's claim. They cited the case law of Hillman v Tompkins (1995). Mr B didn't think this was a fair outcome. So, he complained to our service. Mr B said Gefion didn't allow him a chance to provide representations and didn't get the police report before settling the claim. Mr B also didn't think the appropriate case law had been considered. Mr B explained his insurance premiums had gone up as a result and asked for compensation.

The police report from the accident stated that the car driver did not check their mirrors correctly and failed to see Mr B's motorbike. It noted the car driver was driving without due care and attention. It made no comment on the driving of Mr B.

Our investigator upheld the complaint and suggested Gefion record the accident as non-fault and pay Mr B £300 compensation for distress and inconvenience. Neither party responded, so it's been passed to me for a decision.

On reviewing the relevant correspondence in this case, I noted that Gefion actually cited two other pieces of case law they felt were relevant in this case. This included Joliffe v Hay (1991) where liability was split 70/30, finding an overtaking car was mostly responsible. And Davis v Schrogin (2006) which found the car driver entirely liable.

Having reviewed the evidence, I felt it was likely I'd reach a different decision than the investigator. So, I shared my provisional decision with Gefion and Mr B so they had the opportunity to make any comments or provide further evidence. Neither responded and so I'm not persuaded to change my provisional findings or decision.

my findings

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

I started by looking at Mr B's concerns about the information he was able to give Gefion before it reached its decision.

Mr B told us he didn't have the opportunity to provide representations. According to the policy terms and conditions, Gefion had the right to settle the claim. So, I wouldn't expect them to necessarily consult with Mr B about the settlement. But I would expect them to give him the opportunity to provide his account of the accident and take this into account.

Having reviewed the correspondence, I can see Mr B was asked for his version of events and given the chance to provide details of any witnesses. So, I think Gefion have acted reasonably here.

But Mr B was also concerned about the fact Gefion didn't get a copy of the police report before settling the claim. And given there was disputed liability and no CCTV or witnesses in this case, I can understand why. I think it's reasonable to expect Gefion to have requested this report to assist their review of the claim given there was no other evidence.

I've noted that in emails to Mr B, Gefion have since observed that Mr B didn't provide them with the report. But he was never asked to. And I don't think it's fair to expect a consumer to know what they need to provide an insurer. For these reasons, I don't think Gefion acted reasonably.

So, I've then considered whether this police report is likely to have affected how the claim was settled.

Having read the police report carefully, I think it clearly supports Mr B's view that he was not at fault. And although it doesn't explicitly comment on Mr B's driving, it does criticise the car driver's actions, as I've mentioned above. So, I think it's reasonable to conclude the police felt the car driver was the one at fault here. Not Mr B. But Gefion have suggested the report wouldn't have changed how they settled the case. They said this was an opinion and it was not stronger than the relevant case law.

And, whilst a police officer is a relevant, qualified professional, I've noted they didn't witness the accident or attend the scene. It seems his opinion was based on accident photos and accounts the drivers gave at the time, which don't really differ from the information later given to Gefion. So, I agree with Gefion that the police report isn't strong enough evidence to show the car driver was fully responsible for the accident.

I can see Gefion's point here is that more weight should be attached to the relevant case law. And where the circumstances are sufficiently similar, I think it's reasonable for Gefion to put weight on the relevant case law. But on reviewing their correspondence in this case, I've noted that Gefion referred to three different pieces of case law which they said were relevant. Gefion have provided us with no information about how or why they have preferred the case of Hillman v Tompkins over the others.

Having reviewed these cases, there are some similarities, but also differences. And I'm not persuaded that any of these cases are sufficiently similar that their findings should have been applied in Mr B's case.

For example, Joliffe v Hay didn't involve a motorbike. In Hillman v Tompkins the motorcyclist was found partially liable because the judge believed they were travelling too fast on the approach to a junction. However, the estimated speeds of this motorcyclist were higher than any mentioned in Mr B's case. And in Mr B's case, the car driver was not turning at a junction, but into a driveway of some unoccupied, new build houses. And in Davis v Schrogin, the car turned to the offside prior to pulling out, meaning the indicators wouldn't have been visible to the overtaking motorcyclist – something which isn't suggested in Mr B's case. In view of all this, it is difficult to know what the outcome of Mr B's claim would have been if it had been considered by a court.

But – as I've said - I don't think the police report is particularly persuasive, so I don't think there's enough for me to say getting it would or should have led to Gefion defending the claim against Mr B. Because liability was disputed, I think Gefion's 50/50 settlement was reasonable, even allowing for the what police report said. So, whilst I appreciate this will come as a disappointment to Mr B, I don't think Gefion's mistake in not getting the report has prejudiced his position.

But I think the service Mr B received from Gefion was poor. As well as the issues with not obtaining the police report, I can see Mr B wasn't kept up to date about his claim. Given it took nearly a year to settle the matter, I think it's reasonable to expect Gefion to have let Mr B know what was happening. But after writing to him in July 2018 to request his account of events, Gefion didn't contact Mr B again until he requested an update from them in January 2019. I also don't think Gefion acted reasonably here to progress negotiations and the claim effectively. For example, on more than one occasion it was over a month before Gefion responded to correspondence sent by the car driver's insurer. And whilst I don't think these delays impacted the outcome, it unnecessarily prolonged the process for Mr B.

For these reasons I don't think Gefion acted reasonably in the handling of Mr B's claim. And I think this caused him distress and inconvenience. So, I think they should pay him £100 in compensation to reflect this.

my final decision

For the reasons I've given, I partially uphold this complaint and direct Gefion Insurance A/S to pay Mr B £100 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 April 2020.

Jade Cunningham
ombudsman