

## **complaint**

Mr N complains that U K Insurance Limited has settled a claim on his motor insurance policy as a fault claim, and that this has affected his no claims discount.

## **background**

Following an incident in September 2017, a third party made a claim against Mr N's motor insurance policy, which is underwritten by U K Insurance. Mr N also made a claim for the damage to the vehicle he was driving at the time.

U K Insurance paid out and recorded the matter as a fault claim against Mr N. He's unhappy with its investigation and says he didn't do anything wrong.

Mr N says he was coming out of a side road onto a main road, but that due to cars being parked (incorrectly), visibility was poor. A motorcycle was approaching the same junction along the main road. Mr N says this third party driver was going too quickly and as a result saw his vehicle too late. The third party braked causing them to fall off their motorcycle, which then collided with Mr N's vehicle.

U K Insurance says it paid out because Mr N was the one emerging from a side road where the third party had right of way. There weren't any independent witnesses or other ways to prove whether the third party was speeding or driving well. So it didn't think it would be able to successfully defend the matter in court.

The investigator didn't uphold the complaint; he thought U K Insurance had exercised its right to settle claims on Mr N's behalf in a reasonable way. Mr N didn't agree; saying that U K Insurance hadn't investigated the details of the claim properly and made an incorrect assumption that the court would normally side with the motorcyclist.

So the matter's been passed to me to decide.

## **my findings**

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

Mr N's policy has a general condition that U K Insurance is entitled to "*take over and carry out the negotiation, defence or settlement of any claim in your name*" – this is quite a common clause and essentially means that it will decide whether to settle a claim and pay out or to defend a claim. Insurers make these decisions on the information available for each claim and taking into account whether it thinks it would be successful if matters were taken to court. There isn't an obligation on insurers to always defend their customer in claims.

In practice, if an insurer pays out and hasn't recovered its costs, this is recorded as a fault claim. This doesn't necessarily mean they are accusing their customer of poor driving.

It isn't our role to determine liability over the facts of an insurance claim. Rather I've considered whether U K Insurance has acted fairly in applying the policy terms and how its handled Mr N's claim.

I understand that Mr N says the incident wouldn't have happened if other cars hadn't parked on double yellow lines by the junction, because this caused an obstruction to the motorcyclist's view of his vehicle. I can see that it did consider whether this would provide a successful defence in court, and it took the view that this wouldn't be enough. Mr N also says the third party wasn't driving correctly, for example he thinks the motorcyclist should've been driving more slowly and further to the right in the road. However, U K Insurance said that without any independent witnesses or proof, this was also unlikely to be a successful defence.

The third party claimed that they were correctly proceeding when Mr N pulled out into their path. Ultimately, U K Insurance took the view that as it was Mr N who was emerging from a side road onto the main road, he had a duty of care to make sure it was safe.

I think U K Insurance has shown it considered Mr N's claim fairly and in line with his policy terms. For these reasons I don't think it needs to do anything further.

**my final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 16 March 2018.

Stephanie Mitchell  
**ombudsman**