

The complaint

Mr H complains about Haven Insurance Company Limited's ("Haven") liability decision following a claim against his car insurance policy.

What happened

Mr H was involved in an accident which he reported to Haven. He explained he was proceeding along a road and moved to the side to allow a car approaching in the opposite direction to pass. He said he then moved from a stationary position and an oncoming third-party vehicle ("TPV1") then collided with his car. Mr H's car was then pushed into a parked car ("TPV2"). Haven decided to accept liability for the accident, so Mr H complained.

Haven responded and explained they'd reviewed the reported circumstances, along with all evidence, before making a decision to hold Mr H at fault for the accident. They said, as Mr H was stationary and then proceeded to move before colliding with a correctly proceeding third-party vehicle, the correct decision had been made. They said they appreciate Mr H had said he let a vehicle pass first, but as he was then the stationary party, the onus was on him to ensure the road is safe and clear before setting off from his position again. They said they can't hold TPV1 at fault for correctly proceeding down the road. They said they understand Mr H's frustration with their decision, but they can't dispute a claim, or proceed through the courts, where they aren't 100% confident the decision would be in their favour.

Our investigator looked into things for Mr H. He thought Haven hadn't acted unfairly in relation to their liability decision. Mr H disagreed so the matter has come to me for a decision.

What I've decided – and why

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

Having done so, I've decided not to uphold the complaint. I understand Mr H will be disappointed by this but I'll explain why I have made this decision.

My role requires me to say how a complaint should be settled quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute. The key dispute here relates to Haven's decision on liability and to hold Mr H responsible for the accident.

My starting point is Mr H's policy booklet. This sets out the terms and conditions and, under a heading 'Conduct of claims' it says, "*We are entitled to take over any third party claim against you...and to conduct the defence or settlement of any such third party claim in your name...*" and "*Where we consider it appropriate, we may admit liability on your behalf...We have full control of all claims covered by this policy.*"

When an accident occurs, it's the insurer who'll decide how the claim should be settled - this includes determining which party was at fault. An insurer might choose to accept liability,

propose or agree to split liability, or choose to defend any allegation of liability. While this decision rests with an insurer, and it's not the role of our service to decide who is at fault for an accident, we can look to see whether an insurer has handled the claim in a fair and reasonable manner. So, although the terms and conditions allow Haven to decide liability in the claim made against Mr H, I've looked into how and why Haven reached their decision and the evidence and arguments they considered before making a decision.

The information shows Haven took into account Mr H's version of events. Having taken details about the accident circumstances during the first notification of loss call, Haven then call Mr H to get more clarity. The note of this call says Mr H explained he was driving along the road and approached a parked car on his left, so he moved to the side to allow a car approaching in the opposite direction to pass. He said he then moved from a stationary position and the oncoming TPV1 collided with his car causing his car to collide with TPV2 which was parked. The note says the claims handler explained this would hold Mr H at fault, but he disputed this and said there was plenty of space for TPV1 to pass through. Mr H also explained that TPV1 has dashcam and this should be requested. The note says the claims handler asked Mr H for diagrams as it would be hard to defend the claim, but Mr H refused and said he couldn't draw. A review is carried out which notes, since Mr H was in a left parked position, the TPV1 dashcam would only show Mr H's car leaving the stationary position – so it wouldn't prove to be helpful in defending the claim.

There's then a further discussion where Mr H explains he was already part way through his manoeuvre in passing the parked car on his left when TPV1 has approached and failed to stop and allow Mr H to complete his manoeuvre. Mr H explains after giving way to the first oncoming vehicle, there were no other vehicles in sight, so he moved from a stationary position to pass the parked car. He says TPV1 has then approached in the opposite direction and instead of waiting or pulling over to their left, the TPV1 driver proceeded down the middle of the road and collided with Mr H's car. Mr H explains the owner of TPV2 witnessed the accident and will confirm TPV1 was at fault.

Haven then receive letters from the insurer for TPV1 and TPV2 holding Mr H at fault for the accident. Both insurers ask for any evidence if Haven decide to dispute liability. During a further call, Mr H explains the owner of TPV2 has images of the vehicles in situ which he says will show that TPV1 was in the middle of the road and not driving along their lane which was clear. The call note says the claims handler explained they could try and get these images, but it would depend on whether the owner of TPV2 co-operates. The note says Mr H confirmed the owner of TPV2 was in their house at the time and only heard the collision. Mr H again mentions that TPV1 has dashcam and the claims handler explains it can be difficult to obtain this as it belongs to the other party.

The information shows Haven then called the owner of TPV2 twice to ask for any images. On both occasions there's no answer, so on the first attempt Haven left a message for a return call and on the second attempt they sent a text message asking them to contact Haven. Haven didn't receive any contact back from the owner of TPV2. Haven then carry out a liability review and note Mr H would be considered at fault because TPV1 would be an established road user and proceeding correctly, whereas Mr H was trying to complete a manoeuvre when not safe to do so.

There's a further liability review where the claims handler questions why Mr H hasn't sent any photos if he is adamant on the positioning of the vehicles and that a photo of the vehicles post-accident in-situ would confirm this. A note says Mr H explained to the claims handler he can't draw so won't provide a diagram or assist with that, so a decision was made to treat this as a fault claim. The notes show Mr H called to dispute Haven's liability decision and again asked about the dashcam, and the claims handler explained they can't force the owner of TPV1 to send this and there's no evidence this even exists.

Taking this all into account, I can't say Haven have acted unreasonably here. The information shows they sought clarity from Mr H at the outset when they found the accident circumstances weren't clear. They've taken Mr H's version of events into consideration and also acted on information provided by Mr H in attempting to obtain any evidence from the owner of TPV2. I acknowledge they weren't able to get the images they were requesting but I can't hold Haven responsible if the owner of TPV2 hasn't responded. I can see Haven contacted the owner of TPV2 by phone and text message, so I think they made reasonable attempts to try and obtain any evidence. I can see both third-party insurers write to Haven to hold Mr H at fault so it's clear, based on their own insured's account of events, they were also holding Mr H responsible. Both insurers ask for any evidence if Haven do decide to dispute liability, but I can't see there was any evidence Haven could provide. As mentioned above, they didn't get a response from the owner of TPV2 and their notes show Mr H didn't provide information which Haven felt might assist. So, I can't say Haven acted unfairly in not challenging liability in these circumstances as they didn't appear to have any supportive evidence with which to present a dispute.

I can see Mr H raised the point about TPV1 having a dashcam and he wanted Haven to request this. He says this will prove he was already in the process of overtaking the parked car when the driver of TPV1 appeared in the middle of the road and didn't stop and give way or move over to their left. The information shows a request was made for dashcam footage, but this appears to have been sent to the insurer for TPV2, not TPV1. So, I've thought carefully about whether I think this makes a difference. Case notes provided by Haven show they did consider the point about the dashcam footage and identified the request had been sent to the insurer of TPV2. But they then decided it wouldn't be helpful and there's no evidence this existed. They then focused on getting evidence from the owner of TPV2.

I acknowledge Mr H feels Haven should've asked for the dashcam footage but there's no evidence TPV1 had dashcam, it was on and recording while driving at the time and that it would've shown anything in support of Mr H's claim that the TPV1 was entirely responsible for the accident. Against this, there's the fact that both third-party insurers are holding Mr H at fault, Mr H hasn't provided any evidence to help Haven challenge liability, and I can't say Haven have acted unreasonably in taking the view that Mr H's own testimony suggests he was at fault. Mr H accepts he was carrying out a manoeuvre following being in a stationary position, and it's not unreasonable for Haven to say it was Mr H's responsibility to then ensure it was safe to then start moving again. There's no dispute that the obstruction was on Mr H's side, and it's also clear that there wasn't sufficient space in the road for two cars to pass – and I think this is evidenced by the fact that Mr H initially stopped to allow another car to pass. I've also looked at an image map of the road and, given the width of the road, I think it's unlikely for two cars to pass if there's an obstruction on one side. So, while I acknowledge Haven didn't request the dashcam footage, I'm not persuaded this would've made any difference.

I do acknowledge Mr H's frustration with Haven's liability decision, and I can see he has strong feelings about who's responsible for the accident. But, my role here is to decide whether Haven have acted fairly and reasonably when reaching a decision on liability – and for the reasons I've mentioned, I think they have.

I wish to reassure Mr H I've read and considered everything he has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

My final decision

For the reasons I have given, it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 February 2024.

Paviter Dhaddy
Ombudsman