

The complaint

Mr S complains that Haven Insurance Company Limited (Haven) has unfairly settled a third-party's claim on his car insurance policy as a "fault" claim.

What happened

Mr S was involved in a road traffic collision which caused damage to a third-party's car. The third-party made a claim on Mr S's car insurance policy, which Haven accepted and then settled as a "fault" claim.

Mr S says Haven shouldn't have done this. He says he was parking his car when the third-party's car hit his, so the claim should've been settled as "non-fault". Mr S says Haven has no evidence – such as CCTV footage – to show the third party's version of events is true.

When Haven didn't uphold Mr S's complaint about its decision, he brought it to us. The investigator who looked at Mr S's complaint didn't think Haven's decision was unreasonable and so didn't think Haven needed to take any action.

Mr S disagrees, maintaining Haven has no evidence to support its decision to settle liability on a "fault" basis. So Mr S's complaint has come to me to decide.

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 Mr S's complaint. I'll explain why.

I should start by saying my role isn't to decide who caused the road traffic collision Mr S and the third party were involved in – that's a matter for the courts. Instead, it's to decide if Haven has acted fairly and reasonably in how it's recorded the claim, based on Mr S's policy terms and the evidence it has.

Mr S's policy says Haven can take over any third-party claim against Mr S and conduct its defence or settlement in his name. This gives Haven the contractual right to settle the third-party's claim as it chooses. But, as I've said, Haven must act fairly and reasonably, based on the available evidence, in making its decision.

Haven says it contacted Mr S to get his version of events leading up to the collision, which was broadly as I've described above – Mr S says he was parking his car when the third party's car hit his. Haven noted Mr S's version of events was different to the third party's, which was that Mr S hit the third party's stationary car while driving at speed the wrong way down a one-way street.

Haven says it then asked the third-party's insurer for evidence to support its version of events. Haven was given a signed statement from an independent witness that said Mr S was driving the wrong way down a one-way street when the collision happened.

Haven says it also asked Mr S for any other evidence he had to support his version of events but he didn't give it anything that assisted with his defence.

From claim notes it's sent us, I can see Haven also reviewed some photos Mr S took immediately after the collision. The notes say, based on these and a review of an online map of the area where the collision happened, it seemed Mr S entered the bottom part of the street, which Haven says is clearly one way. The notes also say one photo shows Mr S's car parked to the left pointing down the street with the one-way arrow visible.

Haven says it couldn't indefinitely dispute liability when there was evidence supporting the third party's version of events. Haven says it considered the outcome of potential litigation which it concluded was "*highly unfavourable*" in Mr S's case, "*given our lack of evidence and their [ie the third party's] supporting evidence*". Because of this, Haven recorded the claim as a "fault" claim.

I know Mr S strongly believes he wasn't at fault for the collision and that the third party's version of events isn't true. He says his photos are persuasive proof he wasn't at fault. And he says there's no CCTV or other footage showing him driving the wrong way down the one-way street, which he thinks should be imperative to his case.

I don't think it's imperative for Haven to have CCTV footage to record the claim as a "fault" claim – road traffic collisions aren't always caught on CCTV and Haven can only be expected to make its decision based on the evidence it has. And I don't think Mr S's photos – which, of course, were taken after the collision and one of which, to me, seems to show his car pointing in the wrong way – are persuasive proof of his version of events.

From what I've seen, I think Haven considered all the evidence it had – that is, Mr S's version of events, the third party's differing version of events and the signed independent witness statement supporting the third party's version – as part of its decision on liability. I think Haven then made the pragmatic decision, based on its assessment of this evidence, to record the claim as a "fault" claim because of the likelihood of a "*highly unfavourable*" outcome if the case went to court. I don't think the approach Haven has taken here was unsound or contrary to the evidence and I think it was in line with Mr S's policy terms. That means I don't think Haven has treated Mr S unfairly or unreasonably in deciding liability on a "fault" basis.

I've already mentioned that my role isn't to decide who caused the collision. I should also say that, by recording a "fault" claim, Haven wasn't necessarily saying Mr S was responsible, or to blame, for the collision. A claim will be recorded in this way if, for example, an insurer can't recover all its costs in connection with a road traffic collision. And that's what I think has happened here.

I've considered all the other comments Mr S has made as part of his complaint but they don't change my conclusions.

My final decision

For the reasons I've given, I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 December 2023.

Jane Gallacher

Ombudsman