

The complaint

Ms S complains that Advantage Insurance Company Limited mishandled her claim on a motor insurance policy.

Where I refer to Advantage or the insurer, I include the intermediary and others insofar as I hold Advantage responsible for their acts or omissions.

What happened

The subject matter of this complaint is a hatchback car first registered in 2002. It used to belong to Ms S's late mother. The car became Ms S's in 2016.

Ms S had the car insured on a policy branded with the name of an insurance intermediary. Advantage was the insurance company responsible for dealing with claims. The policy was comprehensive, so it covered damage to the car. But that was subject to a policy excess of £45.00, save for windscreen damage which was subject to an excess of £85.00.

The car passed an MOT in January 2021 with a recorded mileage of about 102,000.

On 8 February 2021, Ms S reported that, while she had been driving the car, its bonnet had come open and damaged the bonnet, the windscreen and the roof. Ms S wanted to keep the car. The next day, the insurer replaced the windscreen and Ms S paid the £85.00 excess.

But the insurer said on 17 February 2021 that the car was a total loss in "category B" (so that the car should never again appear on the road).

On 19 February 2021, Ms S and the insurer had a discussion about her withdrawing her claim and keeping the car. The insurer sent an email saying Ms S had withdrawn her claim and that her no claims discount wouldn't be affected.

On 25 February 2021, the intermediary wrote to Ms S giving notice to cancel the policy with effect from 4 March 2021.

Ms S complained to the insurer that it should remove the category B marker.

By a final response dated late March 2021, the insurer said it hadn't explained that the reason for the cancellation was that it wouldn't insure a category B car. The final response said that the insurer was sending Ms S a cheque for £50.00 to compensate her for not following the correct process. Ms S brought her complaint to us without delay.

our investigator's opinion

Our investigator dealt with the complaint as a complaint against the intermediary. She didn't recommend that the complaint should be upheld. She thought that the intermediary had acted fairly. She said the intermediary had determined the car's market value was £875.00 and it would cost £1,798.60 to repair.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Ms S and to Advantage on 18 January 2022. I summarise my findings:

Advantage and Ms S each agree that – before the accident – the car was in good condition and had a market value of £875.00.

Ms S had asked the insurer to reinstate her claim. And I couldn't see any reason why Advantage shouldn't have paid the claim.

Other insurers will continue to ask Ms S if an insurer has cancelled her insurance.

Subject to any further information from Ms S or from Advantage, my provisional decision was to uphold this complaint in part. I intended to direct Advantage Insurance Company Limited to:

1. offer to pay Ms S £875.00 (without deduction of any further excess) if she makes her car (and all keys and relevant documents in her possession or power) available for Advantage to collect; and
2. add simple interest to any such payment at the yearly rate of 8% from 8 February 2021 to the date of payment. If Advantage considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Ms S how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate; and
3. write a letter to Ms S (which she may show to other insurers) saying that it incorrectly cancelled her policy and that it has removed any record of its cancellation from any internal or external databases on which it has recorded its cancellation; and
4. pay Ms S (insofar as it hasn't already) £200.00 for distress and inconvenience.

Ms S accepted the provisional decision.

Advantage accepted the provisional decision. It says, in summary, that it would be able to re-open the claim, but at present this would not represent a change in outcome.

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.

It's common practice for an insurance company that has paid out on a claim to treat that claim as a "fault claim" against its policyholder unless and until it recovers its outlay in full, usually from a third party. There may be a number of reasons why the insurance company can't recover its outlay in full. So a fault claim doesn't necessarily mean the policyholder was responsible for causing the damage.

The Financial Ombudsman Service deals with a consumer complaint against an insurance company or other regulated financial firm. Where it's a complaint about the handling of a claim under an insurance policy, we deal with the complaint as a complaint against the

insurance company that was responsible for dealing with that claim. In our final decision, we name that insurance company, but we don't identify any other party.

In Ms S's case, the policy terms included the following definition:

"We/Us/Our [the intermediary] on behalf of the Insurer identified on your Certificate of Motor Insurance"

And the certificate of motor insurance identified Advantage as the insurer. So the intermediary was acting on behalf of Advantage. And I've treated the complaint as a complaint against Advantage. I hold Advantage responsible for the acts or omissions of the intermediary in dealing with the claim and the complaint.

The policy schedule included the following:

"You have 7 years of no claims discount. You do have protected no claims discount"

So I find that Ms S did have a protected no claims discount. And I expect Advantage to treat the no claims discount as protected in the event of a fault claim.

The policy terms about total loss said that Advantage might cancel the policy if Ms S didn't get a replacement car within 30 days of a total loss payment. The policy terms about cancellation said that Advantage would give seven days' written notice of cancellation, stating the reason.

Advantage and Ms S each agree that – before the accident – the car was in good condition and had a market value of £875.00.

At such a value, any damage estimated at near to or more than £875.00 would lead the insurer to treat the car as a total loss. When she realised that, Ms S complained that there had been little point in paying more for comprehensive cover when she could've paid less for third party, fire and theft. But I consider that this was her choice and I don't hold Advantage responsible for it.

In my view, Advantage realised after the accident that the damage wasn't just to the windscreen and that it was highly likely to lead to a total loss. But I don't consider that Advantage should've anticipated that its engineer would say it was a total loss in category B so that there wasn't the option of Ms S keeping the car.

So I don't find it unreasonable that Advantage dealt separately and urgently with the windscreen repair. That cost Ms S £85.00 and she didn't have the benefit of it for more than a few weeks. But I don't find that Advantage did anything wrong in fixing the windscreen before its engineer assessed the vehicle as a whole. And I don't find it fair and reasonable to direct Advantage to reimburse Ms S the £85.00 (or the £40.00 difference between the £85.00 excess and the £45.00 excess).

As it turned out, the engineer said the car was in category B. Ms S tried to get the insurer to put it in a different category so she could repair it.

In my view, Advantage was responsible for giving Ms S some confusing and contradictory information about her options. In particular, I find from Advantage's email of 19 February 2021 and Ms S's later reply, that Advantage had led Ms S to believe that if she withdrew her claim, Advantage would not only maintain her no claims discount but would also remove the category B marker. I find it likely that was why Ms S withdrew her claim.

But the only engineering evidence is that the car was in category B. So I can't say that Advantage treated Ms S unfairly by maintaining its record that the car was in that category.

Advantage's email of 19 February 2021 and its email of 15 March 2021 said that Ms S had withdrawn her claim but could reinstate it later.

But I find that – as early as 26 February 2021 – Ms S asked the insurer to tell her its pre-accident valuation. And on about 4 March 2021, Ms S emailed the insurer including the following:

"I would now ask the following from yourself representing [the intermediary]:
1. My claim is immediately reinstated today
2. The Category B is removed from my vehicle immediately as confirmed in our previous discussions.
3. My insurance is reinstated immediately OR a reason for the cancellation is recorded in a way it is not detrimental to any future cover..."

So Ms S was asking the insurer to reinstate her claim. And Advantage should've responded to that by reinstating her claim in March 2021. But it didn't do so, and I find that unfair and unreasonable.

I can't see any reason why Advantage shouldn't have paid the claim. But it didn't do so, and I find that unfair and unreasonable. Therefore, I find it fair and reasonable to direct Advantage to offer to pay Ms S £875.00 (without deduction of any further excess) if she makes her car (and all keys and relevant documents in her possession or power) available for Advantage to collect.

As Advantage should've made payment to Ms S sooner, I find it fair to direct it to add interest at our usual rate from 8 February 2021 to the date of payment.

In my view, it wouldn't be fair and reasonable to direct that the reinstatement and payment of the claim wouldn't be a fault claim. But, as she had a protected no claims discount, the claim shouldn't affect that discount. The fault claim may still affect insurance quotes for Ms S.

Advantage hasn't made a total loss payment. And its notice of cancellation dated late February 2021 didn't state the reason for the cancellation. And neither did its confirmation of cancellation dated 3 March 2021. So Advantage didn't follow its policy terms. So I find the cancellation unfair and unreasonable.

Ms S couldn't get alternative cover for her car. But I find that this was because it was category B, rather than because Advantage hadn't followed its policy terms about cancellation.

Nevertheless, other insurers will continue to ask Ms S if an insurer has cancelled her insurance. and I've found the cancellation unfair and unreasonable. So I find it fair and reasonable to direct Advantage to write a letter to Ms S (which she may show to other insurers) saying that it incorrectly cancelled her policy and that it has removed any record of its cancellation from any internal or external databases on which it has recorded its cancellation.

I haven't held Advantage responsible for putting the car in category B. But I have held Advantage responsible for confusing and contradictory information, delay in paying the claim and unfair cancellation. This was at a time when Ms S's job had been made redundant. She was understandably emotionally attached to her mother's old car.

Advantage recognised its shortcomings only in relation to the cancellation process. I give it credit for offering a cheque for £50.00 but I don't consider that this went far enough. Ms S told us that she hadn't presented the cheque for payment. The claim and the complaint remain unresolved over a year after the accident.

Weighing all this up, I find it fair and reasonable to direct Advantage – in addition to a replacement cheque for £50.00 - to pay Ms S an additional £150.00 to make a total of £200.00 compensation for distress and inconvenience.

Putting things right

I find it fair and reasonable to direct Advantage to offer to pay Ms S £875.00 (without deduction of any further excess) if she makes her car (and all keys and relevant documents in her possession or power) available for Advantage to collect.

As Advantage should've made payment to Ms S sooner, I find it fair to direct it to add interest at our usual rate from 8 February 2021 to the date of payment.

I find it fair and reasonable to direct Advantage to write a letter to Ms S (which she may show to other insurers) saying that it incorrectly cancelled her policy and that it has removed any record of its cancellation from any internal or external databases on which it has recorded its cancellation.

I find it fair and reasonable to direct Advantage – in addition to a replacement cheque for £50.00 - to pay Ms S an additional £150.00 to make a total of £200.00 compensation for distress and inconvenience.

Compared to Advantage's final response, this final decision represents a change in outcome in Ms S's favour. She will receive an increase in compensation and the benefit of a letter mitigating the effect of the cancellation. If she complies with the condition of making her car available, then Ms S will also receive £875.00 plus interest in settlement of a claim that she asked to reinstate in March 2021, but which Advantage hadn't reinstated.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Advantage Insurance Company Limited to:

1. offer to pay Ms S £875.00 (without deduction of any further excess) if she makes her car (and all keys and relevant documents in her possession or power) available for Advantage to collect; and
2. add simple interest to any such payment at the yearly rate of 8% from 8 February 2021 to the date of payment. If Advantage considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Ms S how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate; and
3. write a letter to Ms S (which she may show to other insurers) saying that it incorrectly cancelled her policy and that it has removed any record of its cancellation from any internal or external databases on which it has recorded its cancellation; and
4. pay Ms S (insofar as it hasn't already) £200.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 15 March 2022.

Christopher Gilbert

Ombudsman