

## **The complaint**

Miss R has complained about her car insurer Advantage Insurance Company Limited because it agreed with a third-party insurer that she was at fault for an accident, which she feels has left her in a disadvantaged position.

## **What happened**

Miss R was involved in a collision in a car-park, where she was coming out of a parking space. The other driver's insurer felt she was at fault and Advantage agreed. On Miss R's behalf Advantage accepted that she was 100% at fault for the accident. Miss R was unhappy, she told Advantage that the police were on her side and felt the other driver had been speeding. Miss R said she could have got at least a 50% finding of fault against the other party, if not 100%, if Advantage had completed a more thorough investigation. Either of which, Miss R said, would have meant she could have received some payment for her damaged car and her injuries – 100% against her, given her policy was for third-party damages only, meant she couldn't claim anything.

Advantage felt it had made the correct liability decision. It noted Miss R's concerns about the speed the other driver was travelling but felt that couldn't be proven. And it didn't think obtaining CCTV footage would assist either – as that wouldn't answer the issue of speed and would otherwise just show Miss R pulling out of the space and into the other car (which wasn't in dispute). Miss R complained to us.

Our Investigator felt that Advantage had acted fairly and reasonably in coming to the decision it had in respect of liability. But, noting that Advantage's acceptance of liability had not been made on a without prejudice basis, she told Advantage it should pay Miss R £500. She explained that accepting liability in the way that it had meant any opportunity Miss R may have had to challenge the liability decision had been taken away from her. So our investigator felt it was fair that Miss R was compensated for upset caused by that loss.

Advantage disagreed. It said it would only be fair to compensate Miss R if she'd have had a reasonable prospect for succeeding in any action against the other driver. Which Advantage didn't think she'd had. Advantage maintained that its liability decision had been fair and reasonable, emphasising that it was supported by case law. The complaint was passed for an Ombudsman's 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 also think that Advantage should pay Miss R some compensation – I think it has fettered her opportunity to take her own action against the third-party driver. Whether she could have been successful or not in achieving any better outcome is not clear. But the point here is that Miss R believes her chances were good, and she had some evidence she

thought was worthy of consideration by a court – but none of that can now be tested. And that is because of Advantage’s actions in not taking a very simple step to protect its policyholder’s rights by making it liability acceptance on a without prejudice basis.

Accepting liability on a without prejudice basis is important because that allows the position on liability to be changed later on. I understand that Advantage doesn’t feel that here it, or any insurer, would ever have been likely to change its mind on the liability position, and I’ll look at that in a minute. But Miss R as a policyholder is, or should be, free to take her own action if she wants to and that should not be compromised by the policy which allows Advantage to settle things as it sees fit. The industry generally deals with that, and this service sees it as good industry practice to do so, by ensuring that decisions are made and communicated on a without prejudice basis. Advantage did not do that here and Miss R has lost her opportunity as a result.

However, I think it is far from clear that Miss R could have been successful in any action she might have taken, in achieving any better outcome. So whilst I think she deserves compensation for the upset caused to her by her loss of opportunity, I can’t fairly make Advantage compensate her for the damage to her car or the injuries she suffered, which she believes she’d have received some settlement for if the fault for the accident hadn’t been accepted as being entirely hers. I understand what Miss R believes happened, and I don’t doubt her conviction in this respect. But I bear in mind that a court would hear likely equally compelling testimony from the third-party who also likely believes, just as fervently, that they were not at fault. The court would then have to bear in mind things like usual road practices and case law. All of which Advantage has explained to Miss R do not go in her favour. I know Miss R had heard views from the police about the accident – but she couldn’t rely on those at court – not unless she had them in writing or the officer was prepared to appear on her behalf. Even then the court would have to weight that against the other available evidence. I’m not saying that Miss R would not have been successful, I’m merely trying to set this out, from an impartial perspective, to help explain to Miss R why it is far from clear that it is most likely that she would have been. But, successful or not, Miss R would at least, had she been able to challenge the liability decision, have felt heard. With Advantage acting as it did, that opportunity was lost, which is why I think compensation is due.

Having explained, as I have above, that it is far from clear that Miss R could have achieved a better outcome here, I come back to the decision Advantage made. Regarding the decision itself, I don’t think Advantage did anything wrong. Advantage took the view that it could not successfully challenge the allegation of fault – and to try to do so to any degree would likely have resulted in costs. I bear in mind that Advantage took case law into account and that it didn’t think the allegations of speed could be proven. It’s not unreasonable for an insurer to apply its skill and knowledge of how courts view liability for accidents when deciding whether or not and to what degree they accept fault on behalf of their policyholder. I think that, on this occasion, Advantage’s decision, which I’m satisfied was made taking all relevant aspects into account, was made fairly and reasonably.

### **Putting things right**

I require Advantage to pay Miss R £500 compensation.

### **My final decision**

I uphold this complaint. I require Advantage Insurance Company Limited to provide the redress set out above at “Putting things right”.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 22 February 2023.

Fiona Robinson  
**Ombudsman**