

## **The complaint**

Ms W complains that Advantage Insurance Company Limited wrongly accepted liability for a third party car insurance claim.

## **What happened**

Ms W has car insurance underwritten by Advantage. The policy is administered by a broker on Advantage's behalf. For ease of reference, where the broker has taken actions or provided information, I'll refer below simply to Advantage.

She says that in late October 2021, she was approached by a third party in a shop car park to say that she'd collided with the third party's vehicle when parking her car and caused damage to the rear of that vehicle.

Ms W says she has no recollection of any such incident when parking her car. She took photographs of the vehicles and a short video on her mobile phone. She says there was no visible damage to the third party's car. And she says she advised the third party that the shop had CCTV, which might be available to view.

Just over a month later, Advantage were informed of a claim the third party had made to their own insurer for repairs to the rear of the vehicle. After some initial investigation, Advantage agreed to accept liability and paid the third party insurer for the claim.

Ms W wasn't happy with this. She believes Advantage didn't investigate the matter thoroughly. She believes the third party has in effect scammed her. And she's concerned about the effect this has had on her no claims discount and current premium - and will have on her future insurance premiums.

Ms W complained to Advantage, but they didn't uphold her complaint. They said they'd chosen not to contest liability because there was little chance they'd succeed in defending the claim if court proceedings were brought by the third party. And they pointed out they were entitled to make that decision according to the terms and conditions of Ms W's policy.

Ms W wasn't happy with this outcome and brought her complaint to us. Our investigator looked into it and didn't think Advantage had been fair to Ms W. She thought they'd failed to investigate the claim thoroughly.

And she asked them to remove any record of the claim (held internally or on external databases), reinstate Ms W's no claims bonus, recalculate her current premiums and refund any difference, and pay Ms W £150 in compensation for her trouble and upset.

Advantage disagreed and asked for a final decision from an ombudsman.

## **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.

I think it's important first of all to set out the facts that I believe all parties would accept in this case.

Advantage are right to say the policy terms allow them to take over the handling of claims on behalf of the policyholder and to decide whether or not to accept or contest liability. This is set out very clearly in the section of the policy document about how to make a claim and again in the *General Conditions* Section.

That kind of condition appears in the vast majority of car insurance policies. It's not unfair or unreasonable. It allows the speedy resolution of claims without recourse to the courts. And it *does*, as Advantage say, allow the insurer to accept liability, taking into account the evidence and the likely outcome if the case were contested, even if the policyholder doesn't agree.

So, there's nothing wrong, in principle, with Advantage accepting liability in this case if they believe – on the basis of the available evidence – that they'd likely lose in court if liability were contested. And, in principle, they don't need Ms W's permission or agreement to accept liability.

That's not in dispute here - and so the key question for me is whether Advantage have taken all the available evidence properly into account and/or taken all *reasonable* steps to investigate the matter and find any further evidence which might inform their decision.

The photographs taken by Ms W at the scene of the incident clearly show contact between the two cars. The rear of Ms W's car is in contact – at one corner – with the rear of the third party's car.

The third party says Ms W reversed her car into contact with their car. It's Ms W's contention that she didn't feel any collision when parking and that the third party later backed their car into a position where it was in contact with hers.

Advantage appear to have decided to accept liability because: (a) the photographs show contact between the cars; (b) Ms W's car is beyond the white line separating the two parking spaces – in other words, her car is trespassing into the third party car's space; (c) the photographs and video provided by Ms W do in fact show minor damage on the third party's car's spoiler; and (d) they have a copy of an invoice from a mechanic for repair of the relevant part of the third party's car.

I don't think any of those assumption are wrong. And in the absence of any other evidence at all, I think Advantage might have been justified in concluding that they should accept liability.

However, I think the real key to resolving this case isn't whether there was contact (there clearly was), or who parked badly across the white line (Ms W clearly did), but rather who initiated the contact. In other words, did Ms W reverse into the other car or did the other car reverse into hers (if that happened, that would be the third party's fault irrespective of how Ms W was parked)?

In that context, I think Advantage could have reasonably done more to investigate without undue effort or expense. I'll explain why.

First, the shop which owned the car park has CCTV. Ms W says she asked them to provide it to her a few days after the accident. They said they'd get back to her but didn't. In the absence of a claim, Ms W didn't follow this up. The claim came a month later.

Advantage could have enquired about CCTV footage with the shop. If they had it, that may have resolved the issue of which car arrived in the car park first – and so, which driver was

likely to have caused the collision.

It may be that by the time the claim was notified to Hastings, the CCTV footage had been deleted. But Advantage didn't ask that question.

They also didn't go back to the third party insurer and ask why the claim had been delayed by just over a month, on the face of it.

There's at least a question there about why the third party delayed making the claim (assuming they did, and the delay wasn't with the third party insurer). Delaying the claim might be seen as potentially an attempt to ensure the CCTV footage was less likely to have been retained by the shop for that amount of time.

Advantage might also have asked for the third party insurer's comments about why the third party appeared to have changed their story about what happened. According to Ms W, she was told at the scene that there was a witness to the alleged accident. Later, the third party told their insurer there were no witnesses.

Advantage asked Ms W for her dashcam footage. But when she said this wouldn't show anything, because there was no collision whilst she was driving, Advantage didn't follow that up.

I understand Ms W did say the dashcam footage wouldn't help, but I think Advantage might have explained to her that it may have shown whether the third party car was parked in the relevant parking space as Ms W drove into the car park.

Instead, they seem to have concluded that it wouldn't be useful because, pointing forwards as it does, it wouldn't show whether the third party car was already behind her as she reversed into her space.

I can see from the claim notes and correspondence provided by Advantage that they also intended to inspect Ms W's vehicle. They may have dropped this idea when they considered the photographs, which clearly showed contact between the two cars. But it may still have been useful to help determine how the collision might have occurred and/or which vehicle impacted the other.

I can also see from the contact notes that at least one of the agents at the broker handling the claim on Advantage's behalf clearly states at one point that they "*haven't done enough*" to investigate Ms W's assertion that she didn't cause any collision between the two cars. That appears to be overridden later by another agent, despite the fact Advantage had done nothing more at that point to further investigate the matter.

In short, on balance, I'm satisfied that in this case Advantage could and should reasonably have done more to try to obtain further evidence before accepting liability on Ms W's behalf. I bear in mind of course that in any court case the onus would have been on the third party to show that Ms W had caused the damage to their car.

### **Putting things right**

The third party claim has now been settled, of course. It's likely not practicable to re-open any investigation into the claim. Even if it were, the evidence trail will now have gone cold given the time elapsed since the alleged accident in the car park in October 2021.

For the reasons I've given above, I think Advantage have acted unfairly towards Ms W in accepting liability for this claim. I say that in full recognition of the fact that there's no real

advantage to them in doing so – they are after all paying out on the claim. Nonetheless, I've explained why I think they've been too quick to accept liability here.

That being the case, I think it's only fair they put Ms W back in the position she'd have been in had they not accepted liability for the claim.

As our investigator suggested, that would mean removing any record of the claim from Advantage's own database and any shared external databases.

It would also mean restoring Ms W's no claim bonus to what it would have been had Advantage not accepted liability. And re-calculating Ms W's premiums since the time of the incident and refunding any difference if her premiums would have been cheaper.

I also agree with our investigator's view that Ms W has been caused a degree of stress and inconvenience by Advantage's failings (as detailed above) in this case.

She's been worried about the effect this claim will have on her future insurance premiums. And she's been frustrated at Advantage's unwillingness to carry out further investigations into the matter in the way she's suggested. I can see from our correspondence with Ms W this has caused her significant distress at the thought that she may have been subject to a degree of injustice in the way liability was accepted.

Bearing all of that in mind, I agree with our investigator's view that £150 is fair and reasonable compensation for Ms W's trouble and upset.

### **My final decision**

For the reasons set out above, I uphold Ms W's complaint.

Advantage Insurance Company Limited must:

- remove from Ms W's records - on their own and any external databases - any mention of this particular third party claim;
- restore Ms W's no claims bonus – to what it would be assuming this incident had never happened;
- re-calculate Ms W's premiums since the time of the incident – again, as if the incident had never happened – and refund her any difference from the premiums she's actually paid since then; and
- pay Ms W £150 in compensation for her trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 7 March 2023.

Neil Marshall  
**Ombudsman**