

The complaint

Mr R complains that Advantage Insurance Company Limited mishandled a claim on a motor insurance policy.

What happened

For the year from late July 2021, Mr R had a vehicle insured on a comprehensive policy with Advantage.

Unfortunately, in mid-September 2021, he reported that his vehicle had come into contact with a bus. Mr R didn't make a claim for repair of the minimal damage to his vehicle.

On 10 March 2022, Advantage sent an email saying that it had closed its file.

In early April 2022, the bus owner made a claim for damage to the bus. Advantage settled the claim and told Mr R that it had done so.

By a letter dated 22 April 2022, Mr R complained to Advantage about its decision and its service.

By a final response dated June 2022, Advantage turned down the complaint about settling the claim. It apologised for delays and poor service when Mr R had asked for updates and information.

Unhappy with that response, Mr R brought his complaint to us in early July 2022.

Our first investigator recommended that the complaint should be upheld in part. She didn't think that it was reasonable to ask Advantage to re-open the claim to investigate liability. But - for the delays and lack of communication - she didn't think that an apology went far enough. She recommended that Advantage should pay Mr R £50.00 for his wasted time and avoidable stress.

Advantage agreed with the first investigator's opinion.

Mr R disagreed with the first investigator's opinion in part. He said, in summary, that at least £200.00 would be a more commensurate compensation figure.

The first investigator and Mr R agreed a figure of £100.00. But the investigator didn't put that to Advantage, who paid £50.00.

Our second investigator recommended that the complaint should be upheld in part. She said that she could see why Advantage had been able to settle the liability very quickly and she didn't think that there had been any error. She thought that there were some small failings in Advantage's handling of the claim and complaint. She was satisfied that £50.00 and an apology is a fair and reasonable way of compensating Mr R for the customer service issues.

Mr R disagreed with the second investigator's opinion. He asked for an ombudsman to review the complaint. He says, in summary, that:

- The bus was parked, jutting out into the road.
- Advantage never tried to find out whether there was any independent evidence.
- It is no excuse to say that too much time had passed for the evidence to be available.
- There is no proof that he was at fault in the incident.
- Advantage showed a lack of fairness, proper investigative processes and acceptable customer service.
- Advantage didn't keep him informed.
- Advantage mishandled his complaint.
- He now has a "fault" claim on his insurance record.
- Advantage also caused him considerable distress and unnecessary time and trouble in trying to set things right.

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.

Recording a fault claim

It's common practice for an insurer to record an open claim as a fault claim against its policyholder unless and until the insurer closes its file without having made an outlay or it recovers its outlay in full, typically from a third party.

An insurer may agree that its policyholder and a third party share responsibility, for example 50/50. In that event, neither the insurer nor the third party will recover its outlay in full.

Most motor policies contain a term allowing the insurer to decide how best to deal with a claim from a third party. Advantage's terms included the following:

*"When defending or settling a claim, your Insurer is entitled to instruct the solicitors of their choice to act for you in any proceedings. If they feel it's appropriate, your Insurer will be entitled to admit liability, for the costs covered under this Policy on behalf of you or any person claiming indemnity under the Policy.
Such admissions may be made before or after legal proceedings start."*

I consider that this term meant that – on an issue of liability to a third party – Advantage's view would prevail over Mr R's.

I will consider whether Advantage applied the term fairly. Unlike a court, we don't get evidence from each driver and/or vehicle owner to decide the extent to which any of them is responsible for causing damage.

From the recording of his first call, I note that Mr R said that he couldn't be sure if the bus was moving. I consider that Mr R accepted some responsibility for the accident. He said it was 'probably 50-50'. Mr R and Advantage agreed to await any claim from the bus owner.

Unfortunately, the bus owner didn't make a claim to Advantage for many months. But its claim was that Mr R had collided with the rear corner of the bus, while it was stationary at a bus stop.

That claim wasn't inconsistent with Mr R's report from September 2021. So I don't find it unfair or unreasonable that Advantage didn't investigate the circumstances, for example by trying to get CCTV or statements from witnesses.

If Advantage had resisted the claim and negotiated split liability of say 50/50, Advantage would still have recorded a fault claim against Mr R.

Rather than incurring the risk and cost of a court case, Advantage settled the bus owner's claim. I consider that this was a fair application of the policy term quoted above.

So I don't find it fair and reasonable to direct Advantage to do any more in relation to the claim or to change its record to "non-fault".

Customer service

Mr R asked for information including updates. Advantage didn't respond as it should've done. Even after he complained, Advantage responded on the issue of the fault claim but had to be reminded to respond on the issue of its service.

Putting things right

I've thought about the impact of these service failings on Mr R. He had to spend time and effort to chase Advantage for information. I don't consider that Advantage's apology was enough to make up for this. I conclude that £50.00 is fair and reasonable for such distress and inconvenience.

Mr R and Advantage have each said that it has paid him that amount. Nevertheless I will direct Advantage to pay Mr R that amount of £50.00 insofar as it hasn't already paid it to him.

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 pay Mr R - insofar as it hasn't already paid it to him - £50.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 March 2023.

Christopher Gilbert

Ombudsman