

## **The complaint**

Mr B says when he made a claim on his motor insurance policy, Advantage Insurance Company Limited's service was poor, and it made an unfair decision on liability.

## **What happened**

Mr B's car was hit by another vehicle on 18 August 2021 when he was turning right into a main road from a side road. He said his view to the right was partly obstructed and that the other driver was speeding, otherwise the collision could have been avoided. Mr B gave Advantage the details of a witness who told him at the scene that she and her partner had noted the other driver was speeding when he passed their car. Mr B also told Advantage that police officers who had attended just after the accident took measurements, plus statements from other witnesses. And he said there was CCTV footage of the accident.

Advantage attempted to contact Mr B's witness. It decided not to request the police report, as the police weren't present when the accident happened, and their report was produced some time later. But Advantage reviewed the CCTV footage and Mr B's photos. It thought the footage showed he was at fault for not ensuring the way was clear before entering what it considered to be a straight main road, with good visibility. It also thought that as it was dark - and the other car had its headlights on - Mr B should have seen it.

Mr B complained to Advantage about its poor service in not contacting him adequately and not responding to his contact with it, plus other service issues. He also complained about the liability decision. Advantage didn't change its view on liability, but it accepted that there were two occasions when it had provided poor service. It offered Mr B £30 compensation. He wasn't satisfied with that, so one of our investigators reviewed his complaint.

The investigator thought Advantage had acted reasonably in making its decision on liability. She didn't think there was merit in Mr B's concerns about not getting a courtesy car (or a substitute vehicle) or being told in error that his protected no claims discount ('NCD') would be affected by the accident. She didn't think he'd been financially affected by the way Advantage handled his request for personal information. But she said it should raise the compensation to £150 to reflect poor service issues, such as its lack of response to Mr B's contact with it. As Mr B wasn't happy with that, the complaint was passed to me for review, and I issued a provisional decision as follows:

*Mr B has provided an extensive account of his concerns. He wants an overhaul of all Advantage's systems, plus a hotline for witnesses. But we aren't the industry regulator. We can't instruct an insurer what processes to put in place. I've reviewed everything Mr B and Advantage have said. But I won't be referring to all of the points made by the parties. I'll focus on the points I think are central to the complaint.*

### *Liability*

*We don't decide who's at fault for an accident. We look at whether the decision the insurer made seems to be fair and reasonable and that it carried out a reasonable investigation.*

*Advantage told Mr B that when a driver emerges from a side road onto a main road, it's likely that if an accident happens, the driver who was on the side road is held at fault. But the advisor also said it may make a difference if there's evidence of the other driver speeding. Mr B's research showed that in similar cases, courts had held drivers who were speeding along main roads to be partially at fault for collisions with vehicles emerging from side roads. So I can see why Mr B wanted all the potential evidence of speeding to be reviewed.*

*Advantage thought the CCTV footage wasn't sufficient to show that the other driver was speeding, but Mr B said it should be considered along with all the witness evidence and the police report. He thought it may have contained relevant measurements taken at the scene (such as the other driver's stopping distance, which would have related to his speed). And it seems the police spoke to witnesses whose evidence might have been useful.*

*In my opinion, it was reasonable for Mr B to expect Advantage to contact the police for a copy of the police report and for it to make every effort to contact the witness who spoke to him. I think Advantage has shown that it tried to contact Mr B's witness, but it delayed in doing so and I think it could have made more effort than it did. There was confusion around her email address that I think Advantage could have done more to clarify, given that her evidence may well have been relevant to the claim's outcome.*

*Based on its experience of similar cases, Advantage thought the best possible outcome would have been for liability to be split – which is in line with the findings of Mr B's research. Although he would still then have had a 'fault' claim on his record - so his premiums would still have risen - Mr B thinks a split in liability would have put him in a better position, as he could then have made a personal injury claim and may have received some compensation.*

*The evidence from Mr B's witness and the content of the police report may not have persuaded the other insurer to settle the claim with split liability. But it could have done. If not, Advantage would have had to consider the prospects of success in court, taking into account the extra evidence. No-one can say what conclusion a judge would have reached, but if there was sound witness evidence that the other driver was speeding, and possibly relevant evidence from the police, it's possible a court would have decided that liability should be split in some way. So in my opinion, it's reasonable for Mr B to think that as a result of Advantage's decisions, any chance to have the claim settled differently was lost.*

#### *Replacement / substitute car and legal cover*

*Mr B's premier policy provides a courtesy car as standard, referred to in the policy as a 'replacement car service'. What's clear from the policy (and is in line with standard industry practice) is that a replacement / courtesy car will only be provided if a consumer's car is being repaired by one of Advantage's approved repairers.*

*Mr B wasn't eligible for a replacement car, as his vehicle wasn't being repaired. But the policy also refers to the cover available if a consumer has bought substitute vehicle cover as an optional extra. With that option, a consumer can claim for the cost of a hire car if their car is written off in an accident that was their fault. Mr B says he was never given the chance to buy it, so we asked Advantage for clarification. It provided evidence that substitute vehicle cover and other options were shown as available online for an extra payment when Mr B first bought the policy. Advantage said it doesn't 'upsell' optional cover unless consumers ask about it. It says Mr B didn't ask, either at the start, or when renewing his policy. Mr B may think Advantage should have brought the option to his attention – but substitute vehicle cover is mentioned in the policy, so I think Mr B had the chance to ask about it at any point.*

*Mr B's policy shows that legal cover is provided as a standard feature. It's there to recover uninsured losses and to pursue personal injury claims when appropriate. It also provides cover against prosecution for motoring offences. The 24-hour legal helpline is to assist with those matters. The legal protection provided with the policy doesn't cover the cost to Advantage of taking a disputed claim to court, as Mr B has suggested.*

## *NCD*

*Mr B says he was told when he reported the claim that his NCD would be reduced or lost - and that he was told the same when he called to cancel the policy's renewal. But Mr B had paid to protect his NCD as an optional extra, which was shown on his policy schedule. We asked Advantage for the relevant call recordings. It provided the one in which Mr B stopped the policy renewal, but there was no mention of the NCD in that call, by Mr B or by the advisor. Advantage says there's no recording of Mr B reporting the claim.*

*Even if an advisor gave Mr B the wrong information about his NCD at some point, the letter Advantage sent to him just after the accident (on 20 August 2021) said his NCD would be affected unless it was protected. I think Mr B could have checked that easily by looking at the policy schedule. Advantage also issued a letter to Mr B dated 8 September 2021 which showed the correct NCD. Mr B says he didn't get it until December 2021. But Advantage has provided evidence recently to show that the letter was issued by post and by email that day. So there was no delay in issuing it.*

*I think most consumers would recall having protected NCD. And I think it's reasonable to expect consumers to look at their policy documents if they're not sure, or to check with their previous insurer, when applying for a new policy. I think Mr B had access to documents that should have prompted him to confirm his NCD with Advantage before he told his new insurer that he had none. With one fault claim on his record, his NCD would have reduced (although only to four years, rather than to zero) but as it was protected, it didn't reduce at all.*

*Mr B got a refund from the new insurer once he provided proof of having over nine years NCD. He says he'd been forced to take out a more expensive policy than the one he'd had with Advantage, so that even with the refund, he's worse off. But there's nothing to show that Mr B took out the cheapest comparable policy, or whether the new policy is better in some respects than the previous one. And I think Mr B could reasonably have avoided looking for a policy based on zero NCD in the first place.*

## *Poor service overall*

*I can understand Mr B's frustration with long waiting times to get through to Advantage, but that issue applies to all its customers - and we can't instruct insurers to improve their call systems. I think Mr B has shown that many of his emails weren't responded to. His first complaint to Advantage was all about the lack of communication and updates. But it only addressed communication issues in its final response letter of 18 August 2022. It noted just two occasions on which it agreed that it hadn't responded to his emails. Advantage's file shows that there were few calls from it to Mr B throughout the claim - and he's specified dates on which he asked for calls back that didn't materialise. So I think Mr B has shown that there were many examples of poor contact, and few updates.*

*Mr B thinks Advantage acted unreasonably in providing him with the details it held about him through a subject access request ('SAR') because it took too long, and many details were redacted. He thinks that was an attempt to hide information from him that might have helped his case. I think whether Advantage acted reasonably in relation to the SAR or not is a matter for the Information Commissioner ('ICO'). Mr B hasn't shown any financial loss as a*

*result of this issue. He says he was inconvenienced by having to deal with Advantage's data protection team, but I think some inconvenience was inevitable.*

*In summary*

*I don't think Mr B has shown that Advantage acted unreasonably in relation to several of the issues he's raised, but I think it was reasonable for him to be frustrated with the way the claim was handled. I think he had reason to believe that (with further investigation) the claim may have been finalised differently. And he was upset by the very limited communication from Advantage. He says he found it hurtful and humiliating that his attempts to communicate with it (to offer help and to raise queries) were ignored.*

*I don't think Advantage gave Mr B an explanation for its lack of contact with him after he first complained to it. And I don't think it gave him a good explanation for not attempting to get the police report. It looks as though the disputed issue of his witness's email address was never resolved. So Mr B was inconvenienced by having to chase Advantage for updates and also by having to try to keep his witness 'on side'.*

*Taking everything into account, I'm minded to conclude that the overall poor service provided by Advantage (including the incomplete investigation of the accident) merits a total sum of £500 compensation for distress and inconvenience.*

I asked the parties to comment on my provisional findings. Advantage accepted that it could have done more on the liability stance, but it didn't think there would have been any benefit to Mr B had liability been split. It didn't accept that £500 compensation should be paid for poor service. Mr B said Advantage had shown poor judgement by commenting that the road where the accident happened was straight - and by not noting the effect on visibility of a railway bridge. He also said Advantage took two months to respond to his SAR, as it wasn't passed to the relevant team despite several requests from him to several advisors. He said that amounted to poor customer service, so more compensation should be paid.

### **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've noted Mr B's comments about the disagreement between him and Advantage about the visibility from the accident site. I understand his concern, but I don't think the issue was central to Advantage's decision. In my opinion, what might have made a difference to the outcome was the potential evidence from the police and witnesses that wasn't gathered.

In terms of poor service, Advantage thinks £500 compensation is too high, but Mr B thinks it isn't high enough. I don't think the £150 proposed by the investigator is adequate, given the significant poor service Mr B experienced overall. That includes the incomplete investigation, which I think caused him a great deal of worry, upset and inconvenience. I think it also meant he *may* have lost out on personal injury compensation. In addition, I remain of the view that the ongoing poor communication from Advantage caused much frustration to Mr B. I've considered whether I should raise the compensation, as Mr B has suggested, but I'd already noted that the SAR took too long, and I think £500 is a substantial sum which is sufficient to cover all the distress and inconvenience Mr B faced.

### **My final decision**

My final decision is that I uphold this complaint. I require Advantage Insurance Company Limited to pay Mr B £500 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 March 2023.

Susan Ewins  
**Ombudsman**