

The complaint

Miss L complains about Advantage Insurance Company Limited's (Advantage) decision to decline her claim, its handling of the matter and failure to make reasonable adjustments for her disability, under her motor insurance policy.

What happened

Miss L drove over a pothole in mid-July 2022. She says it was the front right-side tyre that hit the pothole. And that this caused a fuel leak and resulted in a juddering sound when driving. Miss L contacted Advantage to make a claim. She says she was asked to provide photos of the damage, which she did, with difficulty due to issues with Advantage's system. But she says this couldn't demonstrate the juddering noise.

Advantage told Miss L that it didn't think the damage she reported had been caused by driving over a pothole. It says it couldn't see any impact damage from the photos Miss L provided, although there was evidence of a fuel leak. Advantage told her she would need to get her vehicle inspected to show the damage was related to her claim.

Miss L didn't think this was fair. She told Advantage that it would be difficult for her to arrange this given her health condition. She requested that it should take the car and inspect it. It didn't agree to this. Miss L says she arranged for a breakdown service to look at her car. She says it thought the damage was possibly pothole related. Miss L subsequently arranged for the car to be taken to a local garage.

Miss L raised a complaint at the beginning of August 2022. She sent a video to Advantage to support the damage having been caused by a pothole.

Advantage sent Miss L a final response to her complaint dated 9 August 2022. This confirmed its decision not to accept her claim based on the evidence it had seen. It advised her to have her vehicle inspected and that it would review this information.

Miss L referred her complaint to our service at the end of August 2022. Advantage sent her a further complaint response dated 8 September. This acknowledged she wasn't happy but told her that its response remained the same. And that it hadn't to date received an inspection report to support Miss L's claim. In its complaint response Advantage says to try and assist Miss L it had instructed an independent engineer to inspect the damage. However, Miss L had refused to allow this. Advantage concluded its response to say there is no evidence to show Miss L's car was damaged by an impact.

Our investigator upheld Miss L's complaint in part. She didn't think Advantage behaved unfairly when requesting an inspection to validate the damage. But she did think it could've arranged for an inspection sooner. She also says Advantage's claim handler made some mistakes including an incorrect date in correspondence regarding the inspection it had arranged. Because of the distress Miss L felt, which was amplified by her health issues, our investigator says Advantage should pay her £150 compensation.

Miss L didn't accept this outcome and neither did Advantage. As an agreement wasn't

reached the complaint has been passed to me to decide.

I issued a provisional decision in January 2023 explaining that I was intending to partially uphold Miss L's complaint. Here's what I said:

provisional findings

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've decided to uphold Miss L's complaint in part. This isn't the response she had hoped for and I'm sorry to disappoint her. But I will explain why I think my decision is fair.

I can see that the incident with the pothole occurred on 15 July 2022. The records show Miss L contacted Advantage to make a claim on 19 July. I've listened to the call recording when this contact was made.

Miss L explains that she tried to call on the day of the incident but couldn't get through. Early on in the call she explains that she has a disability. This means that stressful situations make her unwell. Advantage's agent acknowledges this and tells Miss L not to worry. I note at the end of the call Miss L thanks the agent for her helpful manner throughout the call.

During the call Miss L describes hitting the pothole. She says she later returned to take a photo of it. She says there wasn't an issue initially but having got back in her car it smelt of fuel and was making a "terrible" noise. She explains that she didn't want to drive it because of this. The agent says this could be classed as accident damage. She gave Miss L two options to progress the claim. The first was for a salvage agent to collect the car and inspect it to see what the damage is and if it's repairable. The other option was for Miss L to take some photos to show the damage that had occurred.

Miss L agreed to return to her car to take some photos and send them to Advantage for it to review.

I note from Miss L's later correspondence that she describes how this was difficult for her because of her disability. I'm sorry that she found this difficult, I can understand that this must have been a distressing time for her.

From the call recording Miss L was given the option of having her car collected and inspected by Advantage's agent. Miss L chose to take photos of her car to demonstrate the damage she was claiming for. Based on this evidence, I think Advantage behaved reasonably by giving Miss L the option of having her car collected and inspected. It was Miss L's decision not to accept this offer.

Miss L describes difficulties when trying to send photos, and a video, using the method Advantage had confirmed. However, this was subsequently resolved, and she manage to send the photos to be assessed. From this information Advantage's engineer thought there was some evidence of a fuel leak – but he didn't think this damage was caused by the incident or that it was impact related. Advantage's records say it wouldn't look to incur costs to investigate this further, given the decision its expert engineer had made from the evidence available.

I've looked at the photos Miss L sent to Advantage. I can see she placed a water bottle on its side in the hole to demonstrate its depth. The pothole appears to be around the same depth as the water bottle when laid on its side. I can't see obvious signs of impact damage on the

photos taken of Miss L's car. However, there is a leak visible on the photos and in the video she provided.

From the records I can see that on 20 July 2022 it was suggested that Miss L should provide a report from a garage to show the damage was linked to the incident with the pothole. The records show Miss L explained she would struggle to get the car to a garage herself. But did say she would send in further images of the damage and a video to show the noise the car was making.

An internal record dated 29 July 2022 refers to chasing the outstanding images. A few days later a call was logged from Miss L requesting an update. The agent asks if she has uploaded the images. The note indicates that the call became unproductive. Miss L asked to speak to a manager, but the agent's manager was on another call. At this point Miss L said she would make a complaint and ended the call.

The records show that the claim's team reviewed the images on 1 August 2022 and concluded this didn't support damage resulting from driving over a pothole.

I can see Advantage provided a complaint response around a week later. This reconfirmed its decision that the vehicle didn't show signs of an impact but was suffering from a fuel leak. The response says Miss L should arrange an inspection and it will look to review any further evidence.

Miss L emailed Advantage on 18 August 2022. She refers to a phone call with its agent and says she has contacted her breakdown service provider. Miss L says her car was inspected at the roadside and it was driven to listen to the noise it was making. She says the report provided indicates the damage was possibly caused by hitting a pothole. In her emails Miss L says her car is now with a mechanic and she is awaiting a further report.

The records show Advantage also sent an email on 18 August 2022 although later on in the day. The date on the emailed letter is 9 August. This appears to have been written in error. The email refers to an email from Miss L from 15 August and says Advantage agrees to arrange and pay for an inspection of Miss L's car. It says instructions were raised with the engineer to carry out the inspection on 15 August.

I can see that Miss L raised concerns in an email dated 19 August 2022 - with the dates referenced in Advantage's email. Also, that the email appeared to contradict a previous response it had sent. I can understand why this caused Miss L concern. It appears a mistake was made with the date written on this email, which resulted in a confused message. More care should've been taken by Advantage's agent when communicating. But I can't see that this was anything other than a genuine error on the part of the agent who wrote the email.

In her email Miss L confirms that she has already instructed a mechanic. In this and other correspondence she says Advantage had tried to force her to do something she would struggle to do, because of her disability. She refers to the Equalities Act 2010 and says Advantage didn't make reasonable adjustments when requested.

I've thought about Miss L's comments and whether Advantage behaved reasonably in asking her to provide a report from a garage in these circumstances.

The policy terms say:

"You must co-operate fully and in a way so as not to compromise the resolution of your claim. Examples may include providing information critical to the investigation and settlement of the claim."

Under the heading “General Conditions” the terms say:

“Give your Insurer all the information and help they ask for including any documentary evidence to back up your claim. All information you provide must be true and correct to the best of your knowledge.”

Also, under “What isn’t covered” the terms say:

“Wear and tear, deterioration, depreciation, or any loss or damage that happens gradually - Failures, breakdowns or breakage of mechanical, electrical, electronic or computer equipment.”

Advantage’s engineer didn’t think there was evidence of impact damage to Miss L’s car, based on the information she sent. I don’t think this is an unreasonable view based on the photos and videos provided. Advantage’s policy doesn’t cover all scenarios. And it’s reasonable to expect it to be able to validate a claim to ensure there is cover provided under its policy terms before it agrees to pay for repairs.

Advantage says it followed its usual process when asking Miss L to obtain a report from a garage. Its engineer didn’t think the damage was covered by an insured cause. He felt this was a mechanical failure. This is excluded by the policy terms. However, it did later agree to arrange an inspection, at its own expense, to assist Miss L.

I’ve thought about whether Miss L clearly identified herself as having a disability when she called Advantage to make a claim. I think she did. Advantage offered to arrange an inspection at this time, which I think was reasonable given Miss L’s health concerns and the difficulties this caused her. I think it was reasonable for Advantage to offer an inspection, without charge, when it did so in August 2022. This appears to have been in response to the concerns Miss L raised. But I think this could reasonably have been agreed sooner at the time Advantage first asked for a report to be provided. Especially as Miss L had made it clear how this would be difficult for her to arrange.

Miss L describes how her health condition is impacted by stress. She says it was made worse by Advantage not making a reasonable adjustment to assist in obtaining an inspection report. Had Advantage offered to arrange an inspection earlier, this could’ve lessened the impact Miss L felt due to the time this matter was ongoing. From the records, Advantage’s claims team reviewed the matter on 1 August 2022. It was only around two weeks later that the independent inspector was instructed.

I can see Miss L didn’t agree to Advantage arranging an inspection. In her emails she says the business only wanted to do this in order to disprove her claim. She didn’t think it was doing this to help her in light of her disability. She also says this only happened after she obtained a report from her breakdown service. Advantage reiterated its offer to arrange an inspection of Miss L’s car. It confirmed it wouldn’t change its decision without evidence that showed the damage was due to an insured cause.

I note after Miss L referred her complaint to our service, she sent Advantage the repair report from the garage she had appointed. Advantage told her this didn’t alter its view. It says it still required an independent inspection to validate the claim.

Miss L has since informed our investigator that she had arranged for the repairs to her car to be carried out.

Our investigator explained that Advantage’s decision to decline the claim, having reviewed

the garage and breakdown reports, occurred after Miss L had referred her complaint to our service. She says this means we can't consider this point here. We can only consider a complaint once it has been raised with the business and it's had the opportunity to provide a final response. I can't see that this has happened here. If Miss L wants to pursue this point she will need to do so in a separate complaint.

Miss L says Advantage has discriminated against her. Our investigator explained that it's not our role to say whether a business has acted unlawfully or not. That's a matter for the Courts. However, I have considered the relevant law when deciding what's fair and reasonable in the circumstances of Miss L's complaint.

I've thought carefully about the impact the delayed offer of an inspection had on Miss L. I don't think Advantage was unfair to require an inspection report, but it could've provided reasonable assistance to help Miss L. It's clear this is something it was able to arrange. It offered to do so when the claim was first raised, and again in mid-August 2022. So, I think it could reasonably have arranged for this to happen earlier in August given Miss L's disability and the difficulties she'd face arranging an inspection herself.

Advantage relied on a policy exclusion that the damage was likely mechanical, and not down to impact damage. I think it should've done more to demonstrate this by arranging an inspection at an earlier stage.

Most people would likely be inconvenienced and caused some distress in these circumstances. However, because of Miss L's disability I think it's fair to accept the impact on her has been greater. She describes how both she and her daughter are disabled and rely on the use of her car. She has lost weight and been unwell as a result of this claim, which has also impacted negatively on her mental health. I think some of this impact could've been avoided had Advantage acted earlier to arrange an inspection after it declined the claim. Because of this I think Advantage should pay Miss L £300 compensation.

Miss L says her car was vandalised whilst it was at the garage, she took it to. She also says her carer was named on her insurance policy, but the car couldn't be driven. Because of this she says she has had to get a different carer closer to where she lives and had to pay them instead.

I'm sorry Miss L has experienced these issues. But I don't think Advantage is responsible for damage caused to her car whilst it was at her chosen garage. Similarly, it wasn't responsible for the car becoming damaged, and it hasn't been shown that this is something covered by her policy. So, I don't think Advantage is responsible for the additional cost and inconvenience Miss L has mentioned here.

In summary I don't think Advantage behaved unfairly in declining to cover Miss L's claim for the reasons it gave. It reasonably required an inspection report to support the claim but should've arranged an inspection itself at an earlier stage. Because of this it should pay Miss L £300 compensation for the distress and inconvenience this caused her.

I said I was intending to uphold this complaint in part and Advantage should pay Miss L £300 compensation for the distress and inconvenience it caused her.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Advantage responded to say it had nothing further to add.

Miss L responded at length. I will briefly summarise her comments before responding below.

Miss L doesn't think I considered the Equalities Act 2010 when setting out my findings. She has provided excerpts from her phone calls with Advantage. She says this shows she was given the option of her car being collected and inspected, which the business later reneged upon. Miss L says she didn't realise she would have to climb onto the floor to take photos. And the option of an inspection wasn't re-offered after she had sent these images to Advantage.

Miss L says the noise began emanating from her car only after hitting the pothole. She says Advantage tried to coerce her out of making a claim and to pursue the local council for the cost of her repairs.

Miss L says Advantage told her the car was a total loss. She says there was no damage before the incident with the pothole. And asks how the car became a total loss if not for the pothole.

Miss L describes the distress she felt when dealing with Advantage's agents over the phone. And that it failed to make reasonable adjustments when its engineers decided the damage wasn't claim related – leaving her to obtain a report from an independent engineer.

Miss L says the complaint she made about the claim decision should be dealt with under this complaint reference. She says Advantage has acted unlawfully and denied her reasonable adjustments. She also says her garage thought the damage was located with the engine mounts. Miss L says this is a direct result of driving over the pothole.

In her further submissions Miss L says she doesn't accept the incorrect date used by Advantage's agent in an email was human error. She says the damage was caused by the pothole and Advantage's view that it wasn't, is defamatory to her good standing. Miss L says £300 compensation isn't enough and she refers to putting Advantage on notice that she was seeking £20,000 in damages if it continued to violate her rights as a disabled person.

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'm not persuaded to change the decision I set out previously. I'm sorry to disappoint Miss L but I will explain why.

I can reassure Miss J that I did have regard to the Equalities Act 2010 when considering what a fair and reasonable decision should be with respect to her complaint. I acknowledge her view that my findings and the compensation I thought Advantage should pay her, is insufficient. But I'm not persuaded by her further comments, that this warrants a change to the outcome I set out.

The crux here, is that Miss J hasn't shown that an insured loss occurred. I think Advantage could've offered and arranged for an inspection after its initial offer to do so was rejected by Miss J. But in these circumstances I still think £300 represents fair compensation for this shortfall.

I don't think it's the case that Advantage reneged on an agreement to provide an inspection at the outset. It's clear Miss L agreed to send photos of the damage for its engineers to consider. Advantage offered to collect the car and inspect it. But Miss L chose not to take this option.

Based on the information Miss L sent to Advantage it didn't think driving over a pothole had caused damage to her car. Referring to the engineers comments, I don't think this was an unreasonable conclusion. The policy terms require Miss L to cooperate and provide evidence to back up her claim. I don't think Advantage behaved unreasonably when asking her to obtain a report from a garage if she thought the damage was still related to the pothole. I think it's reasonable that it later agreed to arrange an inspection given the difficulties Miss L advised she was having. However, Advantage's engineers were clear the damage wasn't the result of driving over a pothole and were likely due to mechanical failure/wear and tear.

I'm sorry Miss L found taking photos of the damage to her car difficult. However, the photos she was able to take were sufficient for Advantage to conclude there were no signs of impact damage. So, although I acknowledge her point about the lack of an inspection – Advantage was satisfied the damage claimed couldn't have been caused by Miss L driving over the pothole. It was Miss L that agreed to take photos to demonstrate the damage, as opposed to allowing Advantage to collect the car and inspect it.

I acknowledge Miss L's reference to Advantage's agents telling her the car was a total loss. But I don't think this has a material impact here. The crux of the matter is that the car hasn't been shown to have suffered an insured loss.

I haven't seen evidence that persuades me the cause of the incorrectly dated letter was anything other than a genuine mistake on the part of the agent who wrote it. I don't think Advantage's view of the damage is defamatory against Miss L. It must establish whether a claim can be validated based on the evidence available. It didn't think the damage could've been caused in the way Miss L described. I accept Miss L thinks otherwise, but I don't think the evidence supports this or that she's shown Advantage behaved unreasonably when arriving at this conclusion.

As I explained in my provisional decision, I think it was reasonable that Advantage later offered to arrange an inspection to help Miss J. This could've happened earlier, but in the end Miss L did refuse to allow this to happen. I acknowledge her reasons for this. But without this it couldn't be shown that an insured loss had occurred. I also acknowledge Miss L's view that her complaint about the claim decision should be considered here. But I don't agree for the reasons I gave in my provisional decision. This is because this took place after she referred this complaint to our service - and is subject to a separate complaint the business hadn't yet responded to.

In summary, although I'm sorry for the distress Miss L felt as a result of the damage to her car, I think £300 compensation is fair to acknowledge the delay in an inspection being offered.

My final decision

My final decision is that I uphold this complaint in part. Advantage Insurance Company Limited should:

- pay Miss L £300 compensation for the distress and inconvenience it caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 21 March 2023.

Mike Waldron
Ombudsman