

The complaint

Mr G complains about the amount Advantage Insurance Company Limited (“Advantage”) paid out under a claim on his motor insurance policy.

What happened

Mr G had a motor insurance policy with Advantage covering his car which he’d bought new.

In August 2022, the car was damaged in an accident and it was assessed as being beyond economical repair by Advantage. The car was written-off and it was less than 12 months old.

Mr G’s policy with Advantage included cover which would mean that it would replace Mr G’s car with a new one.

Advantage said it couldn’t supply a replacement because the car had to be ordered from the manufacturer, and a replacement wouldn’t be ready until about April 2023.

Because of this delay, Advantage said it would settle the claim in cash. It said it would pay Mr G £ £38,807. It said it would do this because this section of its policy wording allowed it to:

“If a suitable replacement car isn’t available, your Insurer will either:

- Pay you the price you paid for your Car (including any optional extras fitted by the manufacturer when new), including taxes at the time of loss; or*
- Pay you the manufacturer’s latest list price (including taxes).*

Your Insurer will pay whichever is less and will deduct any Excess that applies.”

Mr G was unhappy with this. He says the car’s price has risen to £44,880 which is the amount he would expect Advantage to pay to settle his claim.

Advantage wouldn’t increase its offer so Mr G brought his complaint to this service. Our investigator looked into his complaint and upheld it. She thought Advantage should have asked Mr G how much a new car would have cost him, and settled his claim for that amount plus interest at 8% simple.

Mr G agreed with the view, but Advantage didn’t. Because it didn’t agree, Mr G’s complaint has been passed to me to make a final 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’m upholding Mr G’s complaint and I’ll explain why.

I've looked at the cover Advantage provides which says:

"If your Car is less than one year old and you're the first and only registered owner (or prospective owner under a hire purchase or lease purchase contract), your Insurer will replace it with one of the same make and model if either of the following applies:

- It's suffered damage covered by the Policy, and your Insurer estimates that the cost of repairing it will be more than 60% of the current United Kingdom list price (including taxes).*

Your Insurer can only do this if a replacement car is in current production, it's available in the UK and anyone else who has an interest in your Car agrees."

I can see from Advantage's claims notes that it accepted his claim and that the car was going to be difficult to replace under this section of cover.

Mr G's car was in current production, but it was a make and model that would need to be ordered from the manufacturer.

Having established that the car was going to be hard to source, it seems to me that Advantage then quickly decided that it would settle Mr G's claim for cash. It is able to do this under the terms of its policy and I think it's fair to do so.

But, the cover then says it will pay Mr G the lowest of either the amount he paid for the car (which was £37,820) or the manufacturer's latest list price.

Mr G has provided evidence that this was £44,880 at the end of August 2022. Advantage has disputed this amount and says it includes interest. I don't agree with Advantage here as Mr G's evidence includes the phrase "OTR" which I'd accept means "On The Road", meaning it's a 'cash' price.

It seems to me that by choosing to settle the claim for cash and then being able to choose the lower amount, Advantage is taking advantage of a term it has applied into Mr G's policy that only benefits Advantage.

It's also important that I say Mr G didn't ask for his claim to be settled in this way, but that Advantage chose it.

In my opinion the clause that Advantage has used isn't fair and reasonable as it can only benefit Advantage, and may cause inconvenience to its customers like it has done with Mr G here.

The fair and reasonable answer here is for Advantage pay Mr G the difference between what it has paid already, and what it would have cost Mr G to buy an equivalent new car replacement at the time of the loss.

I think it's also fair that Advantage pay Mr G interest at 8% simple on this amount, between the date it originally settled the claim and the date it makes this payment to Mr G.

I've said above that Mr G has provided evidence of the replacement car's price to this service and I'd ask that he and Advantage liaise to agree that this figure represents the correct price without delay so that Advantage can make payment. For the avoidance of doubt, it's my expectation that £44,880 represents the correct manufacturer's list price for the and I'd expect both parties to proceed accordingly.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint.

I direct Advantage Insurance Company Limited to pay Mr G the difference between the amount it has already settled his claim for, and the manufacturer's list price at the date of loss. Advantage Insurance Company Limited should also pay interest on this amount at 8% simple from the date it originally settled the claim, to the date it makes payment.

Advantage Insurance Company Limited must pay the amount within 28 days of the date on which we tell it Mr G accepts my final decision. If it pays later than this, it must also pay interest on the amount from the date of my final decision to the date of payment at 8% a year simple.

If Advantage Insurance Company Limited considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr G, it should tell him how much it's taken off. It should also give Mr G a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 April 2023.

Richard Sowden
Ombudsman