

The complaint

Mr W and Mr W's son complain Advantage Insurance Company Limited (Advantage) unfairly cancelled their motor insurance policy and did not fairly settle his claim.

References to Mr W or Mr W's son, will include the other.

Advantage are the underwriters of this policy i.e. the insurer. Part of this complaint concerns the actions of the intermediary. As Advantage have accepted it is accountable for the intermediary, in my view, any reference to Advantage includes the actions of the intermediary.

What happened

On 12 September 2022 Mr W's son who was a named driver on Mr W's motor insurance policy was involved in an incident. His van was hit from behind whilst it was stationary in traffic.

Mr W made a claim on his policy and the van was collected for repair by Advantage's authorised repairer.

Advantage contacted Mr W in October 2022 to inform him the van was to be classed as a total loss. It made a settlement offer of £1,580. Advantage said it would deduct the remaining policy credit agreement due from this amount.

On 18 October 2022 Advantage confirmed it had paid the settlement figure less the deductions for the remaining policy credit agreement. It paid Mr W £97.42 and cancelled the policy.

Mr W complained the deductions made to the settlement amount were unfair as this was a non-fault claim. He also said he was not given the option to have his van returned.

As Mr W was not happy with Advantage, he brought the complaint to our service.

Our investigator upheld the complaint. They looked into the case, and they did not think it was fair of Advantage to deduct the amount due on the policy credit agreement from the settlement amount. They said Advantage should pay him £700 compensation for the distress and inconvenience caused. They said that this included Mr W's son quitting his job as he was unable to get to work and Mr W being left without a van and no insurance for the remaining time left.

As Advantage is unhappy with our investigator's view the complaint has been brought to me for a final decision to be made.

What I provisionally decided and why

*I first looked at the policy terms and conditions. On page 18 it says;
"If your claim is settled on a Total Loss basis and you pay by instalments under a loan*

arrangement with us we may take all outstanding payments from the claims settlement or ask you to pay the outstanding amount (see Total Loss section for more details)."

On page 21 it again says;

"If you're paying for your Policy by instalments under a loan arrangement with us and your Insurer settles a Total Loss claim under these sections, your Consumer Credit Agreement with us may entitle us to do one of the following:

- Take the outstanding amount due for your Consumer Credit Agreement out of the claims settlement*
- Require you to pay the outstanding amount due for your Van.*

If your Van is declared a Total Loss, and you've already paid the premium in full, no refund will be made, even if the Policy is later cancelled. This may not apply if your Insurer is able to recover all losses from a Third-party. In this case Insurers may sometimes refund the Premium paid and, if they do, we'll pass that refund on to you.

If your claim is settled on a Total Loss basis and you don't replace your Van within 30 days of being issued the settlement payment we'll cancel your Policy. The notes above, about loan agreements and refunds, will still apply."

On page 37 it says;

"If your Policy is cancelled your insurer won't refund the Premium for your Van where a non-recoverable claim has been made during the Period of Cover, in this case, if you're paying by instalments under a loan arrangement, you'll have to pay the balance of the loan agreement and our cancellation fee (if it's 14 days or more since your Policy started). You'll also have to pay any interest and fees due under your Consumer Credit Agreement."

I listened to the call Advantage made to Mr W in October 2022 . In this call its advisor explained two options. The first option was it would pay Mr W the settlement amount of £1,580 minus the remaining amount owed on the credit agreement. The second option was it would pay the settlement amount direct to him and he could continue with the policy on a different van and continue with the monthly direct debit payments due.

I do understand that Mr W felt this was unfair as he said the incident was the third-party's fault. He said any costs associated with insurance should be passed to the third-party.

I heard during the call Mr W confirm to Advantage's advisor that he did not plan to get another van. He said only first option was open to him.

Because Mr W's van had been deemed a total loss, full payment of the policy premiums was due to be paid as per the terms of the policy, therefore the options given were correct as per the terms of the policy. But the contract of insurance and the contract for the finance to pay the policy are separate. We don't think an insurer should have authority over the finance contract. It's the finance company's role to take the money back. However in this case Advantage did act in accordance with the policy terms by deducting the remaining premiums.

Advantage made its settlement payment by using the total loss value of the van, minus the remaining cost of the policy premiums. The interest that would have been due if he had continued to pay for his policy monthly was not charged. And it did not deduct the policy excess to this amount as it said it considered the claim is highly likely to be recovered in full, from the third-party. I think this calculation was fair in the circumstances of this claim.

In this case I have considered if Advantage were clear and fair in how it approached this situation.

I don't think Advantage's advisor clearly explained the claim situation at the time of making the call to Mr W. Mr W was not clearly advised that his claim was still open, and that this meant Advantage were still in the process of trying to recover costs from the third-party. The advisor didn't tell him if the claim costs were recovered from the third-party there was potentially a refund available for the cost of his policy.

Mr W asked during this call if he could retain the van. Advantage's advisor said he would look into this for him. He asked the advisor to put all the options in writing to him.

After the settlement had been paid to Mr W, Advantage did explain in a letter dated 23 October 2022 that his claim was currently open and therefore showing as a fault claim as it had not yet made a full financial recovery. It said if it made a full financial recovery from the third-party insurer his claim would then be amended to a non-fault claim, and he can at that stage contact our customer service team to see if there is any available refund.

I saw that it was not until November 2022 that Advantage contacted him and explained the costs associated with retaining the van.

This case has still not been concluded and the third-party(s) are contesting liability. Advantage have confirmed that it still has no update on this as it is still awaiting a response from the third-party(s) of which there are two.

Advantage is required to handle claims promptly and fairly and as it has now been more than six months since the incident I think advantage should be progressing the claim with the third-party(s) more proactively. Liability for this claim should be settled as soon as possible.

Mr W said his son who was a named driver on the policy had to quit his job since he was unable to go to work and he himself was also left without a van and no insurance for the remaining time left on the policy. Although I accept that Mr W has been left without a van, he did say he did not intend to replace it. And I saw within the policy statement of insurance that both Mr W and his son had access to other vehicles.

I intend to uphold Mr W's complaint and I intend to require Advantage to pay £500 in compensation for the distress it has caused to Mr W by not being clear of all his options in the circumstances of this claim. It did not make the offer of retaining his van or explain the claim was still open before it made its settlement. If this had been explained Mr W may have made a different decision.

In addition if the claim is found to be non-fault I intend for Advantage to pay Mr W the cost of the policy premiums deducted from his settlement.

My intended final decision

For the reasons I have given I intend to uphold this complaint.

I intend to require Advantage Insurance Company Limited to pay Mr W £500 compensation and if the claim is settled as a non-fault I intend it to return to him the cost of the policy premiums it deducted from his settlement.

Responses to my provisional decision

Mr W responded and said

- The claim was a non-fault claim as his van was hit from the rear. He wanted to understand when and how did the decision that the whole premium is to be paid back came about if it declared a non-fault claim.

- He accepted the provisional decision.

Advantage responded and said

- It would not have provided the option to retain the van to Mr W or to any customer as this isn't something it is able to do. It said it would make customers aware they would need to have a conversation with its authorised salvage partner who are the specialists in this field. It also said it is not within our jurisdiction to look at the complaint in relation to retaining the van as Mr W had not complained to it about that.
- From the incident circumstances it feels Mr W is not at fault but one of the third-parties could provide evidence that disputes.
- this and as soon as it has confirmation liability is no longer disputed it will refund the overpaid premium as this is in line with industry standard.
- As the policy terms have been followed it did not agree it should make a compensation payment.

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.

In response to Mr W's comments

- A claim is usually declared non-fault if the insurer, in this case Advantage, is able to recover the costs of repairing or replacing the vehicle from the third-party/third-party insurer. This is industry standard.
In this case Mr W's claim is still open as Advantage have still not agreed liability with the third-party(s). Advantage said this is because there is more than one third-party involved in the incident.
As the claim is still open there is no refund due to be paid back to him as yet.

In response to Advantage's comments

- As the insurer Advantage are responsible for the actions of its approved partners, in this case its salvage contractor.
- I saw an email sent from Mr W to Advantage on 21 October 2022, where he says; *"My son uses that van on a daily basis, so now, he no longer has a work van. How do you think that has affected his living? You have taken the van, written it off, and currently offered nothing back in compensation, now my son has no means of getting to work, through an accident that was of no fault of ours at all"*.
In addition, I heard during the call between Advantage and Mr W where Advantage explained the need for it to deduct the premiums, retaining the van was also discussed. Therefore I am satisfied this is within the jurisdiction of this complaint as it has been mentioned by Mr W to Advantage on more than one occasion and is integral to the overall lack of clarity given from Advantage to Mr W regarding his claim.
- I agree that Advantage worked within the terms of its policy in deducting the premiums. However in this case I have not seen evidence of Advantage being clear to Mr W what he may expect if the claim is settled as non-fault. It did send a letter that said if it made a full financial recovery from the third-party insurer his claim would then be amended to a non-fault claim, *and he can at that stage contact our customer service team to see if there is any available refund*. It was not clear this meant refund of the premiums deducted from the settlement amount.

Based on the evidence I've reviewed I maintain my provisional decision to uphold Mr W's complaint. I require Advantage to pay £500 compensation for the distress it has caused to him by not being clear about all his options in the circumstances of this claim and of the potential refund of overpaid premiums. And as it has confirmed to us, it should refund any overpaid premiums as soon as its confirmation liability is no longer disputed.

My final decision

For the reasons stated above I uphold this complaint.

I require Advantage Insurance Company Limited to pay Mr W £500 compensation. And as soon as it has confirmation liability is no longer disputed in this claim it should refund any overpaid premiums.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mr W to accept or reject my decision before 2 June 2023.

Sally-Ann Harding
Ombudsman