

The complaint

Mr P had a motor insurance policy with Advantage Insurance Company Limited. He said it reached the wrong decision about his liability for an accident and provided poor service.

What happened

Briefly, the accident happened when another driver stopped opposite a junction and remained there, despite having no obvious reason not to proceed, or to turn into the junction. Mr P waited behind and then overtook the other car. As he did so, the other driver turned her car into his passing vehicle. Mr P said Advantage didn't investigate the claim properly, as it didn't get the other driver's version of events and made a premature decision on liability without reviewing a statement from an independent witness. Mr P also said its reasons for holding him at fault changed over time and that it provided very poor service to him overall.

One of our investigators reviewed Mr P's complaint and didn't uphold it. Later, after reconsidering her first view, although she still thought Advantage had made a reasonable decision on liability, she said it didn't handle the claim efficiently. But she thought it had acted reasonably in offering Mr P £100 for poor service. As there was no agreement, the complaint was passed to me for review. I issued a provisional decision, upholding Mr P's complaint in part. In summary, I said the following:

Writing off the car and providing a valuation

I noted that initially Advantage had offered Mr P too little for his car, but after he pointed out the correct valuation in one of the trade guides, it increased its offer by around £900, which Mr P accepted. I thought the decision to class the car as a total loss was fair, given its value and the amount of damage to it. But I thought Advantage had provided poor service around the issue, especially by giving Mr P conflicting and inaccurate information - and by forcing him to make a long journey to collect items from the car.

Information gathering

I thought it was fair for Mr P to say that Advantage made minimal efforts to contact the witness and didn't tell him to return his signed statement within two weeks. I didn't think he was chased for a response either. I noted that Advantage said later that its time limit should have been adjusted, but instead the claim was closed early. I thought Advantage's service around the issue was very poor. And I said I thought it should have tried to get a statement from the other driver, especially as Mr P had said her poor driving caused the accident and gave details of what she did wrong.

Case closure and re-opening

I noted the particularly poor communication from Advantage to Mr P on this issue. He was told twice in December 2021 that the case wouldn't be closed (or liability decided) until the witness's statement had been reviewed. He found out later that at the time he got those messages, the case had already been closed – although in response to a query he raised about it, he was told that wasn't the case. In January 2022 Advantage said his claim was

closed in error but had now been re-opened. But that wasn't accurate either. Mr P queried it with the advisor who had told him about the re-opening, but he didn't respond. I said I could see why Mr P was so upset and frustrated by all these inexplicable discrepancies.

Other poor service

I noted that Advantage had offered Mr P £100 for a few relatively minor service issues, but that numerous other more serious service issues hadn't been addressed. I said they arose in the total loss / valuation process, the information gathering process, the case closure / re-opening saga and in the process for deciding liability. So I thought more compensation for Mr P's distress and inconvenience was merited.

The liability decision

I said although Mr P had accepted that he disregarded Highway Code guidance by overtaking at a junction, he felt he had no choice, given the other driver's odd behaviour. I noted that Advantage initially said it held him at fault because there was no evidence that she wasn't indicating to turn right at the time. But after the witness confirmed she wasn't doing so, Advantage then made several assertions about the incident, including that Mr P may have been speeding (when the witness said he'd been stationary before overtaking) and that by indicating when making the manoeuvre he may have confused her. I also noted that Advantage said the driver of the car at the rear when an accident happened was usually held at fault - but that Mr P's car was alongside and slightly ahead of the other car at the point of impact. I thought it odd that Advantage hadn't wanted to review the other driver's account, given the statements made by Mr P and the witness, especially given that she had not only stopped her car for no reason, but also hadn't seen Mr P's car, either when it was behind, or alongside, her car - and she hadn't made safety checks before turning right.

Was the liability decision fair and reasonable?

I said I understood why Mr P thought he wasn't to blame for the accident, given the other driver's behaviour, and that had Advantage acted differently, the other insurer may have agreed to split liability - but was unlikely to have agreed that Mr P wasn't at fault at all. So in my opinion, he'd still have had a fault claim on his record and his premiums would still have risen. I noted that Advantage didn't think it could persuade a judge that Mr P bore *no* liability for the accident, and that it thought the best outcome in court would have been split liability. I thought it was fair for it to have considered the prospects of success in court alongside the cost of proceedings. I didn't think it would have made a difference to Mr P's situation had Advantage acted differently.

In summary

I said I was minded to conclude that Advantage should pay Mr P £400 compensation for distress and inconvenience, based on its poor service (especially in relation to the witness and in not challenging the other insurer) plus its poor communication with him. I asked the parties to comment on my provisional findings. Advantage didn't respond to them, but Mr P made numerous comments.

In essence, he emphasised the amount of time he'd had to spend dealing with all the issues that arose from Advantage's poor service and poor communication, over a period of several months. He said it had caused him extreme stress that had affected his health. He also said that being held fully at fault, with a claim of over £11,000 against his name, had led to a huge rise in his premium – and that split liability would have had much less financial impact on him. He pointed out the numerous discrepancies in Advantage's communication and said

he'd been misled by it. He queried if it had reviewed the witness statement properly and said he couldn't follow why it changed its stance to full liability, despite the witness's support.

I issued a further provisional decision, in which I said I thought I'd seriously underestimated the impact on Mr P of Advantage's poor service, especially in not challenging the other insurer about the other driver's conduct. I said I understood how galling it must be for Mr P that she doesn't have a fault claim on her record and wasn't required to explain her actions. I said I was minded to raise the compensation to £750. I still thought it was reasonable for Advantage to decide not to start proceedings in court, but I said it was hard to see why - if it had reviewed the witness statement properly - it didn't argue for liability to be split. I still thought that split liability wouldn't have left Mr P better off financially; he'd still have had his no claims discount reduced and would still have had a fault claim on his record. I said these were major factors in setting premiums, whereas the cost of a claim isn't a major factor.

I asked the parties to comment on my further provisional findings. Advantage didn't respond. Mr P didn't accept them. He said he'd be taking legal advice and may take the matter to court, as he was sure a judge would look favourably on his actions.

He said Advantage had ignored basic procedural matters - the 'First Notification of Loss' process (requiring it to get a statement from both drivers, amongst other things) and the 14-day rule (to be applied to the driver at the rear of a collision). He said both procedures were set by the Financial Conduct Authority ('FCA') but that I hadn't taken them into account.

Mr P also said I'd said the initial decision made by Advantage was full liability against him, when in fact it had first said that liability would be split, but that - pending the witness statement - that could change. He said it had never explained why it accepted full liability. He said the other driver did nothing that was expected of her, and that her actions could be considered negligent - whereas he only departed from one aspect of the Highway Code. Although Mr P had said previously that perhaps he should have sounded the car's horn before overtaking, he commented that it wasn't his responsibility to do that (or to flash his lights). He said that shouldn't have been necessary and may have been a criminal offence.

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 understand why Mr P wants to take his case to court. Advantage didn't think there was a reasonable prospect of success in doing so, but that's only its opinion. I thought it was a reasonable conclusion for it to reach, but that's just my view. A judge may think otherwise.

I agree with Mr P that Advantage should have sought an account from the other driver, as I said in my previous decisions. I thought it was a major omission in his case, but I'm not aware of the FCA requiring all insurers to do so routinely. In relation to the 14-day rule Mr P has quoted, again I'm not familiar with an FCA requirement relating to the driver at the rear when an accident happens. In my previous decisions, I commented on Mr P's point about his car *not* being at the rear at the point of impact, which I think is correct - but I don't think the issue was a factor (or not a significant one) in Advantage's decision about liability anyway.

I'm sorry if the wording of my previous decisions about what Advantage said to Mr P at various times about liability caused any confusion. Mr P's said it told him initially that the claim was likely to be decided on the basis of split liability (in which case he'd be held *partly* at fault) but that the liability stance might change, depending on the witness's statement. My aim was to reflect that position when referring to it in my previous decisions. And I said I didn't understand why, given the witness's support for Mr P, Advantage had changed its

stance and held him fully liable for the accident.

The other driver in this case appears to have made a substantial contribution to the accident, as I said in my previous decisions. Mr P may only have departed from one aspect of Highway Code guidance, but he said that *in hindsight* perhaps he should have sounded the car's horn. I agree that he shouldn't have had to take that action, as the other driver should have been aware of his presence - however, if there was a chance that it could have prevented the accident, it might have been advisable, as Mr P has since realised. But that doesn't detract from the other driver's questionable acts and omissions at the time.

I appreciate that Mr P is very disappointed with my recent provisional decision, but he hasn't said anything in his latest comments that has led me to change my mind. I still don't think he's worse off financially than he would have been had liability been split, but in my opinion, he was seriously let down by Advantage's poor service and its poor communication. And (as I've explained in more detail in my previous decisions) I think some of its actions were inexplicable and its investigation was lacking in some respects. Consequently, I think it would be fair and reasonable for Advantage to pay Mr P £750 compensation.

My final decision

My final decision is that I uphold this complaint. I require Advantage Insurance Company Limited to pay Mr P £750 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 22 August 2023.

Susan Ewins
Ombudsman