

The complaint

Mr W complains about his insurer, Advantage Insurance Company Limited (Advantage), declining to cover a claim for damage to his vehicle in a collision, having initially indicated it would be covered. The vehicle was being driven by a driver (his partner) not listed as someone able to drive the vehicle under his motor insurance policy.

References to Advantage in this decision include their agents.

What happened

In September 2023 Mr W's vehicle was involved in a collision, when pulling out of a junction from a minor road onto a main road, being hit by a third party vehicle. Mr W's vehicle suffered significant damage. At the time of the collision, his vehicle was being driven by his partner. Mr W contacted Advantage to tell them about the collision and lodge a claim.

Mr W's partner wasn't listed on the policy as someone able to drive the vehicle. The partner had a separate policy with Advantage, but this didn't include driving other vehicles. However, Advantage initially indicated to Mr W (in a call in November 2023) the claim would be covered, as Mr W hadn't knowingly allowed an uninsured driver to drive his vehicle.

But Advantage then declined the claim, saying Mr W's vehicle was being driven by an uninsured driver. While they accepted the vehicle wasn't intentionally driven uninsured, they said Mr W had broken the terms of his policy agreement – a breach of contract – so they wouldn't cover the claim and the damage to Mr W's vehicle. They said the policy's General Conditions and General Exceptions meant they wouldn't provide cover, their liability as insurer being restricted to obligations under the Road Traffic Act (RTA).

Advantage also reviewed the circumstances of the collision and said they wouldn't be able to dispute liability for the collision. Under Rule 72 of the Highway Code, the onus was on the party at a junction to exit the junction when safe to do so, giving way to traffic on the main road. As such, Advantage said they would have to settle the claim from the third party in full, and record it as a fault claim against Mr W. While accepting this wasn't be the outcome hoped for by Mr W, if the issue of liability were to proceed to court, it was likely the court would rule in favour of the third party.

Mr W complained to Advantage. In their final response (November 2023) they upheld the complaint. They accepted Mr W had been provided with incorrect information when he'd been told he'd be covered under the policy, but then told by the underwriting and claims teams he wouldn't be covered as the driver of his vehicle was uninsured. They apologised for the inconvenience caused and awarded £50 compensation but didn't change their decision not to cover the claim.

Mr W then complained to this Service. He was unhappy at having been told his claim would be covered, but then told this was incorrect and it wouldn't be covered. The damage to his vehicle and Advantage's decision not to cover the claim meant he'd suffered a significant financial loss (the vehicle was valued at £15,000). He wanted Advantage to cover his claim.

Our investigator didn't uphold the complaint, concluding Advantage didn't need to take any action. Reviewing Mr W's policy documents, his partner wasn't a named driver, so Mr W couldn't claim under his policy for the damage to his vehicle (likely to have meant it was a total loss). Advantage had also considered the circumstances of the collision and concluded they wouldn't be able to claim the third party was liable for the collision. They were able to determine liability under the terms of the policy. Advantage also acted in line with the policy terms and conditions when they said their liability was restricted to meeting the requirements of the RTA (and seek to recover the costs of doing so from either Mr W or his partner).

Mr W disagreed with the investigator's view and asked an ombudsman to consider the complaint. He said he'd been told on the call (in November 2023) his claim would be covered, the agent telling him he would check and confirm what he said, which he did. At no point was he told the call was being transferred for clarification. He also challenged the decision to record the claim against him, as if he was driving at the time of the incident.

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.

My role here is to decide whether Advantage have acted fairly towards Mr W.

The key issue in Mr W's complaint is Advantage declining to cover the damage to his vehicle, on the grounds it was being driven by a driver (his partner) who wasn't included under Mr W's policy as a [named] driver able to drive the vehicle (and wasn't able to drive other vehicles under her own policy with Advantage). Mr W says Advantage acted unfairly in first telling him they would cover the claim but then changing their decision to say they wouldn't be covering the claim.

Looking at the terms of Mr W's policy, the policy renewed in August 2023. The certificate of insurance issued under the policy states the 'persons or classes of persons entitled to drive' are Mr W and another named driver (his father). Mr W's partner is not included. So, the partner wouldn't be covered under the policy while driving Mr W's vehicle. And as Mr W's partner's insurance policy didn't include her being able to drive other vehicles, then she wouldn't have been covered under that policy either.

That being the case, then at the time of the collision, Mr W's vehicle was being driven by a driver not insured to drive it. But as the vehicle was insured under the policy, Advantage correctly say their obligations under the policy are only those set out in the RTA. In the circumstances of this case, Advantage have dealt with the claim under 'Article 75' where a vehicle is insured – but they've declined a claim because the driver at the time of the claim wasn't insured.

The policy terms and conditions also provide no cover where an insured vehicle is being driven by a driver not insured to drive it. Under the *General Exceptions* section of the policy, it states:

"Your policy doesn't cover the following:

1. Use of your car

You are not covered for any injury, loss, damage or liability that takes place while your car is being:

- *Driven by, or in the charge of, someone not shown on your Certificate of Motor Insurance.*

A key issue raised by Mr W in his complaint and when responding to our investigator's view is that he was told, in a call in November 2023, his claim would be covered. I've listened to the call. In it the Advantage agent says they are awaiting an underwriter response on the claim and there would be no further action from the underwriter against the policy as the policyholder hasn't knowingly allowed an uninsured driver to drive the vehicle. The agent then says he will put Mr W through to Claims Services. It's clear Mr W takes this to mean his claim will be covered, but it isn't what the agent actually says – I would take no further action against the policy to indicate (or at least suggest) they aren't going to avoid the policy (cancel it) as the driver at the time wasn't insured to drive the vehicle.

However, even though Mr W takes the discussion and what the agent says to indicate the claim will be accepted (and I understand why Mr W would have thought that) it doesn't change the facts of the case that Mr W's partner wasn't insured to drive the vehicle, either under Mr W's policy as a named driver or under her own policy. In which case, Mr W had formed an understanding that wasn't subsequently confirmed. Advantage accept Mr W had been provided with incorrect information when he'd been told he'd be covered under the policy, but then told he wouldn't be covered as the driver of his vehicle was uninsured. They apologised for the inconvenience caused and awarded £50 compensation.

Listening to other calls, Mr W acknowledges the initial claim with the agent and a subsequent call through to the Claims Team who said the claim wouldn't be covered. Which indicates he was aware of the two calls and being told on one call his claim was being accepted and then being told it wasn't.

Taking all these points together, I've concluded Advantage acted fairly and reasonably in declining Mr W's claim, on the grounds his vehicle was being driven by a driver who wasn't insured to drive it (either under his policy or under the driver's policy). But they did cause confusion to Mr W in first indicating it would be accepted and then saying it wouldn't. I think this would have caused distress to Mr W, which Advantage have awarded compensation. I think they've acted fairly and reasonably in awarding £50 compensation.

I've also considered Advantage's decision they would not be able to hold the third party involved in the collision. Advantage cite Rule 172 of the Highway Code as meaning Mr W's partner would be held liable for the collision, as she was pulling out from a minor road onto a main road when the collision occurred. Rule 172 of the Code states:

"...The approach to a junction may have a 'Give Way' sign or triangle marked on the road. You MUST give way to traffic on the main road when emerging from a junction with broken white lines across the road."

My role here is to determine whether Advantage have acted fairly and reasonably towards Mr W, it isn't to determine liability for the collision. But from the evidence and information I've seen, Advantage have considered the circumstances of the collision – including Mr W and his partner's version of events – and concluded they would not be able to hold the third party liable for the collision (and so recover any of their costs).

The policy terms and conditions provide for Advantage to assess a claim and determine liability for an accident (a claim). The *General Conditions* section of the policy, under a sub-heading 1. *Making claims* states:

"Your insurer has the right to:

- *...Take over and conduct the defence or settlement of any claim under the policy for its own benefit...*

So, I've concluded Advantage have considered the circumstances of the collision and determined they cannot hold the third party liable for the collision and wouldn't be likely to be successful in doing so should the matter be considered by a court. Given this, I can't conclude Advantage have acted unfairly or unreasonably.

Taking all these points into account, I think Advantage have acted fairly and reasonably towards Mr W, so I won't be asking them to do anything further.

My final decision

For the reasons set out above, it's my final decision not to uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 July 2024.

Paul King
Ombudsman