

The complaint

Ms A is complaining that Advantage Insurance Company Limited (Advantage) are holding her partially responsible for an accident after she made a claim against her car insurance policy. She is also unhappy with delays in her claim being dealt with.

What happened

In August 2022 Ms A was involved in a car accident involving a third party vehicle. Initially her claim was being dealt with by a third party company however in September 2022 Advantage took over her claim.

In January 2023 Advantage were made aware by the third party's insurer that it was holding Ms A responsible for the accident. In May 2023 Advantage wrote to Ms A to make her aware it would be settling the claim on a partial fault basis. The claim was settled with each party being held 50% responsible for the accident. Ms A was unhappy Advantage had agreed to settle the claim in this way and so raised a complaint. She was also unhappy with the delays in her excess being refunded.

Advantage considered Ms A's complaint and said it was reasonable in settling the claim the way it had done. It acknowledged it took longer than it should have done to refund 50% of Ms A's excess and paid £30 compensation which it says includes 8% per year simple interest on the delayed excess payment.

Our investigator upheld Mrs A's complaint in part. He didn't think it was unreasonable for Advantage to settle the claim on a 50/50 split liability basis. However he didn't think the compensation Advantage had paid in relation to the delays in dealing with Ms A's claim was reasonable and so asked Advantage to pay £150 compensation in addition to any interest due as a result of the delays in refunding 50% of Ms A's excess.

Advantage accepted our investigator's opinion but Ms A disagreed with it. She didn't think it was reasonable for the claim to be settled on a 50/50 basis as she says she'd provided evidence that the third party making the claim was different to the person driving the vehicle.

The complaint has been passed to me to decide.

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 want to acknowledge that I've summarised Ms A's complaint in less detail than she has presented it. I've not commented on every point that she has raised. Instead I have focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy about this, but it simply reflects the informal nature of this service. I assure Ms A and Advantage that I've read and considered everything she's provided. I'll address the key points separately.

Liability decision

I should first explain that it isn't this Service's role to say who's at fault for causing an accident as that is the responsibility of the courts. Our role is to look at whether Advantage carried out a fair investigation, reviewed all the evidence it has and has come to a reasonable decision.

The terms of Ms A's policy allow Advantage to take over and conduct the defence or settlement of any claim made under the policy. So it was entitled to settle the claim on what it believed to be the best terms and it had the final say in how to settle a claim. However it needed to exercise this right fairly and reasonably, taking into account everything both parties have provided.

Advantage explained that the version of events Ms A provided during her initial call, and the version of events provided on the accident report form differed. These versions of events again differed from those given by the third party. Advantage explained that as there was no independent evidence such as witness statements or CCTV footage it wouldn't have enough evidence to hold the third party 100% at fault and so agreed to settle on a split 50/50 basis.

Ms A has explained that she has provided evidence that the third party submitting the claim wasn't the person driving the third party vehicle at the time of the accident and this should be enough to support her version of events

I'm satisfied from the evidence provided that Advantage did consider Ms A's version of events and all the evidence available before coming to its conclusion to settle the claim on a 50/50 basis. This includes the information Ms A has provided about the driver of the third party vehicle. Advantage considered the likely outcome should the claim have been presented before a judge, taking into consideration relevant case law, and I think this was reasonable. I know Ms A feels strongly about this however I don't think Advantage acted unreasonably in the way it agreed to settle Ms A's claim.

The way the claim was handled

Advantage have a responsibility to handle claims promptly. Based on the evidence provided I'm not satisfied it has done so here.

Advantage began looking into the liability of the accident in January 2023 following the third party's insurer contacting them. However it had taken over the claim in September 2022 and so it's reasonable to expect that liability be investigated at this stage. Whilst I don't believe this would have impacted the liability decision, it would have likely meant liability could have been resolved sooner than it was. This in turn would have meant Ms A would have received a refund of 50% of her excess earlier than she did.

Advantage received the refund of 50% of Ms A's excess in June 2023 but didn't reimburse this to her until January 2024. Ms A chased Advantage for a refund of her excess on more than one occasion without response. This delay in receiving 50% of her excess, and having to chase this would have caused her some distress and inconvenience and it's right she is compensated for this. I think £150 compensation is reasonable to acknowledge the distress and inconvenience that Ms A suffered having to wait for 50% of her excess to be refunded and the time she spent chasing this with no response.

In addition Advantage should pay 8% per year simple interest on the 50% excess refund calculated from the date it received this from the third party's insurer to the date the 50% excess was refunded to Ms A. This is to acknowledge the time Ms A was without funds she should have received sooner.

Ms A has provided correspondence she has had with other third party businesses, however I haven't seen any evidence that these third party businesses were instructed by Advantage and therefore I can't hold Advantage responsible for any of their actions.

Ms A has also provided detail about the way her claim was initially handled by Advantage. However I can see a complaint about this was previously investigated by this Service and so I haven't commented on that in this decision.

My final decision

For the reasons I've explained I am upholding this complaint. I require Advantage Insurance Company Limited to do the following in order to put things right:

- Pay Ms A £150 in compensation (i.e. an additional £120) if it hasn't done so already.
- Pay 8% per year simple interest on 50% of Ms A's excess calculated from the date it received the refund from the third party's insurer to the date the refund was paid to Ms A.

If Advantage Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest it should tell Ms A how much it's taken off. It should also give Ms A a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 22 October 2024.

Andrew Clarke
Ombudsman