

The complaint

Mr L and Mrs L complain about their insurer, Advantage Insurance Company Limited (Advantage), declining to cover a replacement vehicle under their motor insurance policy following the total loss of their previous vehicle.

References to Advantage in this decision include their agents.

What happened

In February 2024 Mr L and Mrs L took out a motor insurance policy with Advantage, paying the premium of £2,229.84 as a lump sum. Unfortunately, two days later, their vehicle was involved in an accident, and they made a claim to Advantage. Following an engineer inspection, Advantage settled the claim for the vehicle as a total loss (£4,893.75 net of the policy excess of £640).

Mr L and Mrs L asked Advantage what would happen if they wanted to insure a replacement vehicle and said they were told they could purchase a new vehicle and then tell them the details, and they would honour the policy for the remainder of the policy year.

Mr L and Mrs L purchased a replacement vehicle, of the same make and model as their previous vehicle (for £4,800). They contacted Advantage, who took the vehicle details. However, Advantage then told them they wouldn't cover the vehicle, saying their underwriters had decided not to offer cover for the vehicle. Advantage said they would be keeping the premium they'd paid.

Mr L and Mrs L then had to decide whether to sell the replacement vehicle, which would have meant a financial loss, or take out a new policy with another insurer. They decided on the latter, at a cost of £3,101.64 (which they paid a monthly premium cost of £258.47, as they couldn't afford to pay the premium in a lump sum).

Unhappy at what happened, Mr L and Mrs L complained to Advantage. In their final response (March 2024) they didn't uphold the complaint, saying they didn't need to do anything differently. Advantage said that once an agreed valuation for a vehicle as a total loss had been paid, their underwriters allowed a policyholder 30 days to complete a change of vehicle. However, if a change of vehicle (a replacement vehicle) wasn't completed within 30 days, the policy would be cancelled.

Advantage said this requirement came from the De-regulation of Insurance Act (the Act), which they said was designed to provide controls and protections to insurance companies to act in their best interest when required. Under the Act, an insurance policy couldn't be kept open without an insurable interest on the policy. 30 days was considered a reasonable period in which a policyholder could purchase a replacement vehicle and add it to the policy.

Advantage said Mrs L and Mr L spoke to their Customer Services Team at the beginning of March 2024 and advised them of the requirements of the Act. The total loss settlement of Mrs L and Mr L's vehicle was accepted by them two days later (7 March) so that was the day from which the 30-day period began. As Mrs L and Mr L didn't notify Advantage of a

replacement vehicle until after the 30-day period had expired, Advantage had cancelled the policy. As there had been a claim under the policy, the policy terms and conditions entitled Advantage to keep the full premium paid for the policy.

Advantage subsequently cancelled the policy (from 7 April), saying Mrs L and Mr L had failed to replace their vehicle. Advantage said cancellation meant a refund of £26.80 was due (being the net of the total cost of time on cover, £2,203.04) and the premium paid (£2,229.84).

Mr L and Mrs L challenged Advantage's final response. They said they were told about the 30-day period for a replacement vehicle to be added to the policy when they contacted Advantage at the end of February 2024. They purchased a replacement vehicle on the same day (2 March) they were informed of the settlement amount. They insured the vehicle on a temporary basis through the supplying dealer, enabling them to drive the vehicle away the same day. Mr L and Mrs L contacted Advantage on 5 March to provide details of the replacement vehicle and were again advised of the 30-day requirement. However, when they provided details of the replacement vehicle, they were told Advantage declined to provide cover. At no point were they told a replacement vehicle of the same make and model wouldn't be covered.

Advantage responded to Mr L and Mrs L, saying their underwriters allowed 30 days from the date the [total loss] settlement was raised to complete a change of vehicle. It was at the discretion of the underwriters what price would result from a change of vehicle or whether to accept – or decline – a replacement vehicle for cover.

Mr L and Mrs L then complained to this Service. They were unhappy at first being told they could add a replacement vehicle under the policy, only to then be told they wouldn't be covered, and Advantage would keep the full premium they'd paid. Advantage's decision meant they'd paid out £2,229.84 for a year's cover with Advantage and then had to pay £258.47 monthly for their new policy with another insurer. They felt they had been badly advised by Advantage and hadn't been given a reasonable explanation for their change of position on covering a replacement vehicle. They wanted reimbursement for the premium they'd paid for the policy with Advantage.

Our investigator didn't uphold the complaint, concluding Advantage didn't need to take any action. Reviewing Mr L and Mrs L's policy documents, the investigator noted they said if an insured vehicle was a total loss, and the premium had been paid in full, no refund would be made, even if cover was subsequently cancelled. The investigator also noted the policy terms included provision for a policy to be cancelled within 30 days of a total loss settlement being issued if the vehicle wasn't replaced.

The policy terms also noted changes to the policy would be subject to Advantage agreeing them. Advantage had provided information on how it calculated the risk from Mr L and Mrs L's proposed replacement vehicle, showing why Advantage declined to provide cover for the vehicle. So, Advantage acted fairly in line with the policy terms and conditions.

However, reviewing the calls between Mr L and Mrs L and Advantage, the investigator thought Advantage could have been clearer, under the requirements of the Consumer Duty, when saying they had 30 days for the policy to be transferred to a replacement vehicle. And why Mr L and Mrs L thought the policy could be transferred to another vehicle. This led to a loss of expectation and distress and inconvenience when Advantage declined to cover the replacement vehicle. In recognition of this, the investigator thought Advantage should pay £150 compensation to Mr L and Mrs L.

Mr L and Mrs L disagreed with the investigator's view and asked that an ombudsman consider the complaint. They made several points. First, the 30-day period for replacing their vehicle after issue of the settlement hadn't been made clear to them. Second, their purpose in contacting Advantage was to seek advice on what they could or couldn't do regarding a replacement vehicle. At no point was the condition about any changes to the policy being subject to agreement made clear to them. They chose a replacement of the same make and model as they wouldn't have expected Advantage to insure a higher risk replacement vehicle. At no point had Advantage said the replacement vehicle would be an issue as far as cover was concerned. Had Advantage made the condition clear, they would have discussed with them what vehicles would be acceptable before purchasing a replacement vehicle. They were told the policy would last a full year and could be transferred to another vehicle.

Advantage also disagreed with the investigator's view, specifically the recommended £150 compensation. They said the policy terms and conditions made it clear changes to the policy would be subject to their agreement and this could mean cover no longer being offered. When Mr L and Mrs L contacted them, they were told about the 30-day period for a change of vehicle. At that point, without replacement vehicle details, they couldn't have known what impact a replacement vehicle would have on the policy premium, or whether cover would be offered at all. Advantage also said the replacement vehicle was a different make, model, engine size, owner/keeper and other details to the previous vehicle (Advantage provided details). While the replacement vehicle was purchased prior to the settlement being issued, Mr L and Mrs L could have contacted them to obtain a quote prior to purchasing the vehicle.

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 L and Mrs L.

The key issue in Mr L and Mrs L's complaint is Advantage declining to cover the replacement vehicle under their policy. Mr L and Mrs L say they weren't told Advantage wouldn't cover the vehicle, which was the same make and model as their original vehicle. Advantage say it is their (their underwriters) discretion whether to accept a replacement vehicle under cover, whether at all or under what terms. Advantage also refer to a replacement vehicle having to be added to the policy within 30 days of the issue off a total loss settlement, after which the policy would have to be cancelled.

Mr L and Mrs L are also unhappy at having paid the full year's premium for the policy and not having it refunded when their policy was cancelled. Advantage say the policy terms provide for them to keep a full year premium where there's a claim and a vehicle is declared a total loss.

On the first issue, there are two elements. The first is the requirement to replace a vehicle that has been settled as a total loss within 30 days of the settlement being issued. In their final response, Advantage say this requirement stems from legislative requirements. The policy terms and conditions reflect this, in a section headed *Total loss – if your car can't be repaired* there's the following statement:

"If your claim is settled on a total loss basis and you don't replace your car within 30 days of being issued the settlement payment we will cancel your policy (in the case of a single car policy)."

I think the term is clear and Mr L and Mrs L refer to being told about it in their contacts with Advantage. I've also listened to the recordings of calls between Mr L and Mrs L and Advantage, where Mr L and Mrs L ask if they purchase a replacement vehicle, would the

policy continue. Advantage confirm they have time to obtain a replacement vehicle and specifically mention the 30-day period from the payment of the settlement in which to replace the written off vehicle with another vehicle.

I've also seen an email from Advantage to Mr L and Mrs L (sent on 8 March) confirming the payment of the settlement, which includes the following statement:

"To give you time to change the car on your policy, it will continue until 7 April 2024. As long as we can still offer insurance on the new car and you're happy with any change to your price, your existing policy will continue..."

"If you don't add a new car to your policy by 7 April 2024, your insurance will end..."

However, the other element of the complaint is that Mr L and Mrs L weren't told their replacement vehicle wouldn't be accepted by Advantage (their underwriters). Listening to the call recordings, which are dated, variously on 29 February and 5 March 2024, while the 30-day period to replace a vehicle is specifically mentioned, there's no mention that the vehicle may not be acceptable.

However, the policy terms and conditions, under a section *General Conditions* and sub heading 6. *Keeping your policy up to date* state the following:

"Changes to your policy will be subject to your insurer agreeing to them. Some amendments may not be acceptable, or may result in different terms, extra costs and/or fees."

This terms would apply to a change of vehicle under the policy, including (as in this case) a replacement vehicle following the total loss of the vehicle insured.

In terms of the replacement vehicle which Advantage declined to cover, I've listened to the call (dated 5 March) in which Mr L and Mr L provide details of the replacement vehicle they purchased. The details provided don't match those of the vehicle Advantage say was provided (as part of their response to our investigator's view). As the call recording is clearly Mr L and Mrs L talking to Advantage, then that's the replacement vehicle I've considered.

Mr L and Mrs L describe the vehicle in detail and the call handler takes down the details. However, having done so, the call handler tells Mr L and Mrs L the vehicle has been declined, that is, Advantage won't cover the vehicle under the policy. The call handler notes they cannot change this and therefore won't be able to add the vehicle to the policy. The call handler doesn't tell Mr L and Mrs L the reasons for the decline (and may not have had access to that information in any event).

While underwriting criteria are commercially confidential, Advantage have provided details of the criteria that explain why they declined to cover the vehicle. Having seen the criteria, I'm satisfied the decline was in accordance with the criteria, based on the information provided by Mr L and Mrs L. Decisions about whether to provide cover are commercial ones, based on risk, for Advantage to make. Given what I've seen, I've concluded they acted fairly and reasonably in declining to cover the replacement vehicle under their underwriting criteria. Mr L and Mrs L say they were given no indication a replacement vehicle wouldn't be accepted, but say they chose a replacement vehicle of the same make and model as they wouldn't have expected Advantage to cover a higher risk vehicle. However, there are typically many risk factors involved in an insurer's decision whether to offer cover on a specific vehicle, which aren't only based on the vehicle itself. While Mr L and Mrs L assumed a replacement vehicle of the same make and model would be accepted (given cover had been provided for the original vehicle only shortly before) this isn't necessarily the view an

insurer would take, so I can't conclude that Advantage acted unfairly in declining to cover the replacement vehicle.

However, listening to the calls, while there are references to the 30-day period in which to add a replacement vehicle, there are no references to the contingency of a replacement vehicle not being accepted by Advantage. So, while the policy statement above (and the statement in the email) set out changes to a policy (including a replacement vehicle following a total loss) are subject to acceptance by Advantage, I can understand why Mr L and Mrs L formed the impression they could add a replacement vehicle, as long as it was within the 30-day period.

So, I think they had an expectation the replacement vehicle could be added, and I've concluded Advantage didn't make it clear that any replacement vehicle would be subject to acceptance by Advantage. In reaching this conclusion, I've also taken account of the Consumer Duty requirements, specifically consumer understanding, where we would expect consumers to understand the information they are given and make timely and informed decisions, and also consumer support, where we expect insurers to provide support consumers need when contacting them.

Taking these points into account, I've concluded Mr L and Mrs L suffered a loss of expectation (that their replacement vehicle would be added to their policy) and also distress and inconvenience when told that it wouldn't be added.

Having considered the circumstances of the case in the context of this Service's published guidelines on awards for distress and inconvenience, I've concluded it would be fair and reasonable for Advantage to pay Mr L and Mrs L £150 for distress and inconvenience.

On the second issue, the full year premium not being refunded, the following policy terms and conditions are relevant, under a section headed *Total loss – if your car can't be repaired*:

"If your car is declared a total loss, and you have already paid the premium in full, no refund will be made for the car in question, even if the cover for the car is later cancelled..."

I think the wording of the statement is clear and would apply in the circumstances of this case (there is a proviso that a refund may be made if Advantage was able to recover all losses – including the total loss settlement – from a third party. However, I haven't seen anything to indicate that is relevant in this case – in one of the calls, Mr L and Mrs L say there isn't doubt the claim was a fault claim.

Reference to no refund of premium being made in the event of a total loss on a vehicle (and a replacement vehicle not added) is also made in one of the calls I've listened to, where the call handler tells Mr L and Mr L the situation of a total loss of a vehicle is where 'the product on a policy has been used'.

So, I've concluded Advantage acted in line with the policy terms and conditions in not refunding the premium paid for the policy.

My final decision

For the reasons set out above, it's my final decision to uphold Mr L and Mrs L's complaint in part. I require Advantage Insurance Company Limited to:

- Pay Mr L and Mrs L £150 in compensation for distress and inconvenience.

Advantage Insurance Company Limited must pay the compensation within 28 days of the date we tell them Mr L and Mrs L accept my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 19 December 2024.

Paul King
Ombudsman