

The complaint

Mr D complains about how Advantage Insurance Company Limited dealt with a claim against his motor insurance policy after his car was hit by an uninsured driver. Mr D has appointed a representative to help him with this complaint. For simplicity I will refer to Mr D throughout.

What happened

Mr D's car was hit by another vehicle while it was parked and he was asleep at home. The police identified the driver and that he was uninsured and proceeded with a prosecution. When Advantage came to deal with Mr D's claim under his insurance policy it was, at first, unable to get the driver's details, which led to delays in concluding Mr D's claim. Later, when police released the driver's details, Advantage sent letters to the stated address seeking to get repayment for the costs it had paid out for the damage to Mr D's car but the letters were returned undelivered. Advantage took the decision to not pursue the matter further and close its file, leaving Mr D as having a record of a "fault" claim against him.

Mr D complained about this outcome. He had taken out a loan for a replacement car while his claim was outstanding. And he felt that the record against him of a "fault" claim was unfair and would cost him more in future insurance premiums.

Advantage explained that it had been unable to progress his claim earlier due to the problems getting the driver's identity from the police. It explained that under the terms of the insurance policy it was entitled to decide how to conclude a claim against a third party. It argued that it had made a legitimate decision to no longer pursue the debt from the uninsured driver on the basis that it didn't think it would be successful. It explained that, under the terms of the policy's clause for damage caused by uninsured drivers, it had allowed Mr D's no claims discount and repaid his excess to him. But it also explained that the "fault" record was only a reflection of the fact that it had been unable to reclaim from the other driver, rather than being that it blamed Mr D for the accident.

Mr D was unhappy and complained to this service. Our investigator didn't uphold the complaint as he felt that Advantage hadn't treated Mr D unfairly in reaching the outcome which it had. Mr D has asked that the complaint be considered by an ombudsman. He has argued that it is unfair for a "fault" claim to be recorded against him when it is agreed that he was not to blame for the accident. He has explained that as a young driver he has had to pay higher premiums for his insurance as a result and that this constitutes additional unfairness under the Equalities Act, as it discriminates against him due to his age. He also argues that Advantage had not done enough to pursue the other driver and that its decision to not pursue further is unreasonable, leading, as it has, to him being unfairly disadvantaged.

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.

Mr D is understandably upset at the outcome of this incident. He is totally blameless for the

damage to his car and, yet, has ultimately suffered disadvantage, both in terms of the trouble and inconvenience of having to deal with the implications of the incident, and in how it has impacted his own insurance record. I know that he will be frustrated by my decision, which is that I do not uphold his complaint against Advantage. I will explain why that is my decision.

The main issue argued by Mr D is the one of the fairness of the closure of his claim and the recording of it as one of "fault" against him so I will deal with that issue first.

The investigator has already pointed out that the terms of the insurance policy allow for the insurer to conclude a claim as it deems appropriate. This is a very common term and reflects the fact that the insurance company is in the best position to decide what is the right approach, in terms of balancing fairness to the policy holder with the commercial decision of whether it is viable to pursue another party for payment. That includes the potential for court proceedings with all of the costs and uncertainty involved. So, Advantage is entitled to close the claim as it has.

I've seen that Advantage have made several attempts to contact the other driver with details of its claim. But it has made the decision not to pursue the matter further. I don't believe that Advantage has treated Mr D unfairly in making that decision although I do understand that he has lost out as a result. Again, Advantage is allowed to make that decision within the terms of the policy which Mr D agreed. While Mr D has argued that Advantage should have gone further, I take the view that it is acting reasonably and within the terms of its authority, to make the commercial decision not to.

The problem remains that as a result of closing the case without recovering its costs there will be a record against Mr D of a "fault" claim. This will likely have some impact on future insurance costs, although insurers differ in their approaches and how premiums are calculated. Mr D has understandably focussed on the term "fault", as well as on its impact. I repeat what has been said by the investigator and the insurer; that the term here only means that there has been a claim that Advantage couldn't recover. Effectively such a record shows that insuring Mr D has led to a cost against the insurer. While the term is potentially emotive it does not mean that he is held to blame.

Notwithstanding that fact, I understand Mr D's complaint that there shouldn't be any impact on him for such an incident. Unfortunately, this is the natural impact of a case such as this in which the other party is uninsured and against whom, in the opinion of the insurer, it is not commercially viable to take action to recover the insurer's losses. I cannot consider Mr D's concerns about how the industry operates but only whether Advantage has acted reasonably in this particular case. I believe it has.

On the issue of The Equalities Act, the investigator told Mr D that if he wished to pursue this aspect then he should raise a further complaint against Advantage. I don't think that prevents me from commenting on the issue here, although it is open to Mr D to raise a further complaint if he feels that he has new information which hasn't been presented to Advantage to date. On the issue raised with this service, that Mr D has suffered unfairly due to his age, I can only acknowledge that some drivers do suffer a greater impact than others when it comes to premium costs. Young drivers are an obvious example of that. But I would explain to Mr D that this is a result of the way that premiums are set based on factors such as risk. Again, it seems that the issues raised about The Equalities Act with this service, under this complaint, are ones aimed at how the insurance industry works and therefore outside of my remit. In regards to this complaint I acknowledge that Mr D might suffer a greater impact on his premiums than other people may do but I have seen no evidence that Advantage have acted in any way differently towards Mr D in such a way as to cause me a concern in relation to the issue of equality.

In relation to the other, related, aspects of Mr D's original complaint to this service I am satisfied that Advantage was not at fault for the initial delays in resolving the claim. It's clear that it made appropriate efforts to identify the other driver and acted appropriately once the information was available. I am satisfied that the resolution of Mr D's claim was handled appropriately as a result.

Finally, it seems that at one point Advantage suggested that it had made a mistake in how it had recorded the claim's conclusion. It has since clarified that under the terms of the policy it has correctly recorded that Mr D's no claims discount has not been affected and also that it has returned to him the excess originally paid. These are terms it offers in the event of damage being caused by an uninsured driver which reduce the negative impact on the policy holder.

In summary, while I have sympathy for Mr D and understand his concerns, I believe that Advantage has acted fairly and reasonably in the way it has handled this claim.

My final decision

I do not uphold this complaint against Advantage Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 19 March 2025.

John Withington
Ombudsman