

The complaint

Mrs W and Mr W complain about the liability decision Advantage Insurance Company Limited made when they submitted a claim under their motor insurance policy.

Mr W has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any actions taken, or comments made, as those of “Mr W” throughout this decision.

What happened

Mr W was involved in a car accident involving a third-party vehicle in January 2023. He contacted Advantage to report the claim and they asked him for the accident circumstances. Mr W said he was approaching a set of traffic lights and had been slowing down when the third-party vehicle, which he said was exiting a side road, collided with the rear side of his vehicle.

Mr W said Advantage advised him they would treat the claim as non-fault, and this meant he didn't look to obtain any further evidence, such as possible CCTV from the area. Mr W says he didn't hear anything further about the accident and renewed the policy on the basis it was a non-fault claim. However, he says around 15 months later Advantage got in touch with him to say liability was being contested, and they had decided to agree a 50/50 split.

Mr W complained to Advantage. He said he had been told the accident would be treated as non-fault and thought it was unfair for Advantage not to have done more to establish what had happened at the time, only to agree a different liability outcome over a year later. He said if he had known the liability outcome could have changed, he would have tried to get CCTV of the accident.

Advantage considered the complaint and upheld it in part. They said they acknowledged they didn't handle the claim as efficiently as they should have and there were delays in reaching a decision and closing the claim – and they awarded £150 compensation in recognition of this.

However, they didn't agree they had acted unfairly in how they'd concluded liability for the accident. They said they had only changed their stance on liability after they received the third-party's accident circumstances. But they reviewed the evidence and found there was no way to prove who was at fault for the accident. This was because the third-party's version of events was that Mr W had been trying to avoid traffic by driving around it and came into contact with the third-party's stationary vehicle. Advantage said both sets of circumstances were plausible, but as there was no supporting evidence for either version of events which showed how the accident occurred – they decided to settle the claim on a 50/50 basis.

Mr W remained unhappy with Advantage's response to his complaint, so he brought it to this Service. An Investigator looked at what had happened but ultimately didn't think Advantage had acted unfairly. He said while he acknowledged there had been delays, Advantage had considered the information provided from both sides before making their decision, which he thought was reasonable.

Mr W didn't agree with the Investigator's recommendation and asked for an Ombudsman to consider the complaint. He said it should have taken Advantage so long to contact the other driver's insurer to ask for their version of events. And because of the delays, he had been stopped from being able to obtain evidence which would show he wasn't at fault for the accident.

Mr W also thought that as the other driver had been insured with Advantage, this was in part a reason why they hadn't tried to resolve liability earlier. He didn't think it was fair for an insurer to take so long to resolve a claim and that this had resulted in a financial impact to him when renewing his policy.

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'd like to start by reassuring both parties that, although I've only summarised the background to this complaint, so not everything that's happened or been argued is set out above; I've read and considered everything that has been provided. This isn't meant as a discourtesy – but instead reflects the informal nature of this Service. So, while I may not comment on each and every point made, or piece of evidence provided, I have taken it all into account when deciding what I consider to be fair and reasonable.

It's not in dispute that Advantage caused delays in the claim process and their customer service wasn't to the standard that Mr W could reasonably expect to receive. I can see Advantage acknowledged there'd been delays in concluding the claim and periods in which no progress had been made. So, I don't need to make a finding on whether or not Advantage did something wrong here. Instead, I need to decide what the impact was to Mr W and whether they've done enough to put things right.

I can see Advantage apologised for the claim delays and made a compensation award of £150. But the main issue of this complaint is really down to the liability decision they made. So, I've looked at the main points Mr W has raised and thought about whether Advantage acted unfairly when dealing with the claim.

I should first explain that it isn't this Service's role to say who's at fault for causing an accident. That's a matter for a court to decide. Our role is to look at whether Advantage carried out a fair investigation, reviewed all the available evidence, and came to a reasonable liability decision.

Under Mr W's policy, Advantage has the right to take over and settle a claim on his behalf. This means they can make a commercial decision about whether it's reasonable for them to defend a claim or not. This allows Advantage to decide how to manage the claim and it mitigates the risk of claims incurring large, unrecoverable costs when it's unlikely an insurer will be able to recover those costs from another party. As this is a common term in most insurance policies, it's not unreasonable – provided Advantage applied this fairly. Advantage did initially progress the claim on a non-fault basis. But they said they decided to settle the claim on a 50/50 basis once the third-party allegations were received. They said they assessed the road layout, the damage to both cars, and the diagram provided by the third-party, and concluded it was plausible for the incident to happen in the way they described and noted the damage to both vehicles showed either party could have caused the incident. They said as Mr W had confirmed on initial call to them that there was no CCTV that he was aware of, and no one had stopped as a witness, they felt that the best course of action was to agree a 50/50 split.

Having considered this complaint, I don't find it unreasonable for Advantage to have agreed and settled the claim in the way they did. They initially pursued the claim as being the third-party's fault, and only agreed to split this later once they considered all the evidence. So, I think they followed normal industry process and agreed to settle the claim in order to avoid any further costs being incurred. And as the policy's terms allow them to make a commercial decision, I'm not persuaded this was unfair. An insurer isn't required to take every case to court at any cost and in every circumstance. And I'm satisfied Advantage acted in the same way any insurer in the industry is likely to have acted in these circumstances. It follows that I find Advantage reasonably settled the liability claim as per the policy's terms and relying on the available evidence.

I do however recognise that this experience has been frustrating for Mr W. He feels that he wasn't kept properly informed of the claim progress and that the delays at the start of the claim meant he wasn't able to obtain further evidence to show he wasn't at fault. He's also said the decision made by Advantage unfairly impacted him, increasing the price of his insurance renewal. So, while I don't find that Advantage's liability decision was an unreasonable conclusion to reach, I do need to think about whether there was any impact to Mr W as a result of the delays at the start of the claim.

I think that Advantage treating the claim as non-fault prior to receiving any third-party allegations was fair in this instance. This is because it's normal practice for an insurer to record a claim on a fault basis until they can recover their outlay in from a third-party. And I haven't seen any evidence that Advantage acted any differently as a result of the third-party also being insured by Advantage,

And while I acknowledge Mr W's frustrations and he may have experienced a loss of expectation, I don't find he has shown he suffered a financial loss as a result of how Advantage handled the claim. Mr W renewed his policy with Advantage on the basis that he had a non-fault claim recorded – which Advantage has said would have had less of an impact on his premiums than if it had been recorded as a fault claim.

In also mindful that even if the claim had been settled on split liability basis earlier, the outcome for Mr W ultimately would have meant he had to pay an increased premium sooner than he did – as even if it was settled 50/50 earlier; this would have meant the claim was treated as a fault claim when he renewed the policy.

It's important to note that Advantage hadn't received the third-party's allegations at the point in which they told Mr W they would be recording the claim on a non-fault basis. So, they wouldn't have been able to tell Mr W the claim was disputed as that hadn't happened yet. And while I appreciate Mr W says he could have sought CCTV if he'd known liability would later be disputed, I'm not ultimately persuaded this would have made a material difference to the outcome. I say this for two main reasons.

The first is that Mr W had told Advantage on the first notification call there wasn't any CCTV or third-party witnesses that he was aware of. And I've not seen any evidence that there was actually CCTV in the area he could have asked for in any event. So even if Mr W had the opportunity to try and seek CCTV – I can't be satisfied, based on the available evidence, there would have been any to obtain.

The second point is that any cameras in the area that did exist may not have been operational. They may not have been focused on the incident location at the relevant time. And any available footage may also not have supported Mr W's position that the third-party was entirely at fault. So, I can't fairly conclude that if Mr W had obtained video footage, the outcome of the claim would more likely than not have been different

In respect of Advantage's communication with Mr W and their general handling of the claim, Advantage upheld this aspect of the complaint and awarded £150 compensation (which Mr W confirms he received). Looking at the circumstances of the case alongside the published guidance from this Service on awards for distress and inconvenience, I think £150 is fair and reasonable compensation for the inconvenience and loss of expectation suffered by Mr W. So, I won't be asking Advantage to make a further award.

Conclusion

Under DISP 3.6.1, my role is to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. I do appreciate Mr W feels he has lost the opportunity to show he wasn't at fault for this accident. But I haven't seen any compelling evidence that this loss of chance would mean that, on balance, the liability outcome would have been any different. And I'm satisfied my decision produces a fair and reasonable conclusion in this specific case.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 28 March 2025.

Stephen Howard
Ombudsman