

## **The complaint**

Mr A complains about the decision of Advantage Insurance Company Limited to hold him liable for a motorbike accident.

## **What happened**

Mr A was involved in a serious motorbike accident when he was in a collision with a cyclist. At the end of their investigation the police decided not to prosecute Mr A for any driving offence. The cyclist had crossed the road in front of Mr A, had no lights or reflective gear, and was shown to have been using headphones and talking on the telephone at the time of the incident. The police found no evidence that Mr A was speeding or riding dangerously.

The cyclist suffered serious injury and made a claim against Mr A's insurance. Mr A also suffered injuries and wanted to claim for his loss under his insurance which included cover for personal injury. Under the terms of the policy Advantage would help to bring a claim against the other party if they were found to be at fault for the accident.

When Advantage investigated the claims it instructed a specialist accident investigator to prepare a report. This involved assessing all of the evidence gathered by the police as well as visiting the crash site and assessing any other evidence available. By the time of the investigation a number of videos had been obtained from cctv covering the location of the incident and these were examined, and the findings included in the report.

The accident report concluded that Mr A had been driving well above the speed limit. This had been determined largely from analysis of the cctv footage which allowed a detailed assessment of speed to be made. The report concluded that if Mr A had been riding within the speed limit then the collision would likely have been avoided. As a result, Advantage decided to accept liability, meaning that it held Mr A responsible for the accident and so would have to pay the appropriate claim from the cyclist for his losses. This decision also meant that Mr A could not claim for his own injuries under the insurance policy.

Mr A complained to Advantage about its decision. He argued that the police had already made a decision that he wasn't at fault based on the evidence and witnesses at the scene. As a result he felt that he was unfairly being prevented from claiming for his own injuries. Advantage maintained its position that Mr A was at fault and so he complained to this service. Our investigator felt that Advantage had acted fairly in coming to its decision so Mr A has asked that an ombudsman consider his case.

## **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 know that Mr A has suffered a lot as a result of this incident. He has had to deal with his own injuries, the upset of the accident itself and the sense of unfairness at how he has been treated. I understand that he has also suffered intimidation locally as a result of being

blamed for the accident and the serious injuries caused to the cyclist. But despite having sympathy for the very difficult position he is in, I cannot uphold his complaint against Advantage.

I know that Mr A will find this decision upsetting and I will attempt to explain my reasons.

It is not the role of this service to make a decision about who was at fault for an accident. The insurance policy which Mr A has with Advantage explains that it is up to the insurer to decide whether to accept liability for a claim or not. My role is to consider whether the insurer has acted properly under the terms of the policy and also whether it has treated Mr A fairly. I know he feels very strongly that this is not the case. But, I need to decide whether Advantage has done what it should have done to assess the situation before making its decision. That includes weighing up the evidence and making a decision based on a reasonable assessment of the case, including considering the prospects of winning an argument in court.

In this case Advantage obtained a very detailed report assessing all of the evidence available both at the time of the accident and since. This had been necessary because of the large claim being made against it by the other side for the serious injuries suffered by the cyclist. That report has been considered by Advantage's legal team and its professional legal advisors, who have strongly advised that Advantage would not be able to win an argument in court if it tried to claim that Mr A was not responsible for the accident. I have also seen the report and the evidence used to complete it. It's clear to me that Advantage had no choice but to accept the advice of its experts and accept liability for the claim.

Mr A has argued throughout that he wasn't at fault. I fully understand his view that the police have supported his case. But I have to again emphasise that I'm only able to assess whether Advantage has done what it should have done here when considering the claim. The fact that it has obtained an accident expert's report and legal advice makes it clear that it hasn't acted unreasonably in how it's considered the issue of liability. It's made a reasonable decision based on the terms of the policy and the information available to it.

I'm aware that this case was being prepared for consideration by a civil court to conclude the issue of the claim by the other party. How the police decide to deal with a case like this is separate and different to the things being considered by a civil court. A police decision not to prosecute can be based on lots of issues, not least the chance of gaining a conviction. That requires a much stronger burden of proof than a civil case. I know that Mr A says that he has been told by police officers that he wasn't at fault. But the evidence provided by the expert is very clear and detailed and left Advantage with a very clear indication of the likelihood of losing any legal argument.

Mr A also feels that Advantage has made its decision in order to avoid paying for his injuries. But, as a result of its decision, Advantage is having to accept a substantial claim against the policy from the other party. If the decision had been the opposite, that Mr A was not to blame, then the policy would only have covered Mr A to have legal support from Advantage to seek payment for his injuries from the other side. In that situation, Advantage would not have had to pay for Mr A's claim itself. It's not the case, therefore, that Advantage have made this decision in order to avoid paying out on the policy.

In conclusion, I'm satisfied that Advantage has acted appropriately and reasonably in coming to the conclusion that it should accept liability for the accident.

**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 A to accept or reject my decision before 27 May 2025.

John Withington  
**Ombudsman**