

The complaint

Mr B complains about how Advantage Insurance Company Limited handled a claim he made on his motor insurance policy.

Reference to Advantage includes its agents.

What happened

Mr B holds a motor insurance policy with Advantage. When he was involved in an accident, he made a claim to Advantage for the damage caused.

Advantage arranged for Mr B's car to be recovered to a garage and for the relevant repairs to be carried out.

But Advantage then declined Mr B's claim. It said he was found to be over the legal limit for alcohol, and as such, wasn't covered for the accident. It also said it wanted reimbursing for what it had paid to repair his car.

Mr B didn't think this was fair and complained. He's said he wasn't charged by the police so doesn't think it's fair Advantage declined his claim. He's also said Advantage should never have authorised and carried out repairs if it wasn't going to accept the claim. He doesn't think he should be liable for Advantage's costs because he could have got his car repaired cheaper himself if Advantage hadn't repaired it. He's said Advantage's actions have left him with a repair bill of around £8,000, on top of the remaining finance on his car.

Advantage maintained it was fair to decline Mr B's claim. It said he's admitted to registering a breathalyser test of either 38mg or 36mg, both of which are over the legal limit of 35mg. It said this is supported by the fact Mr B was arrested and taken to the police station for further readings.

It's said it authorised repairs before it found out Mr B was arrested for blowing over the legal limit. It said it was told by Mr B that he blew under the legal limit, so when it authorised repairs it had every intention of paying the claim. It's only when it found out he'd blown over the legal limit that it declined the claim.

It did acknowledge it told Mr B that repairs hadn't started, which was incorrect, but said it rectified this the following day. It paid Mr B £30 to acknowledge this confusion.

Mr B didn't wasn't happy with Advantage's response so brought his complaint to us.

Our Investigator didn't recommend it be upheld. They thought Advantage was acting in line with Mr B's policy when not paying the claim. They didn't think Advantage had acted unfairly by repairing the car either. They thought it authorised this on the information Mr B gave it – that he blew under the limit.

They also thought Mr B hadn't shown he was in a worse position because Advantage repaired the car. This was because the car was on finance, and so the balance of that finance would always be due to the finance company. If the car was unrepaired or written off,

Mr B would owe more on that agreement as opposed to owing Advantage for the repairs it carried out. They said they'd not been provided any evidence to support Mr B could have repaired the car for less than Advantage paid.

Mr B didn't agree and asked for an Ombudsman's decision. He says Advantage repairing the car has limited his options, leaving him with a considerable bill to pay.

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.

Having done so, I'm not upholding it. I'll explain why.

The claim decline

Mr B's policy with Advantage says he's not covered if *"an accident happens while [he] or anyone entitled to drive under [his] current certificate of motor insurance –*

- *Is found to be over the prescribed limit for alcohol or drugs in the country where the incident happens*
- *Is driving while unfit through alcohol, drugs or other substances, whether prescribed or not"*

Advantage thinks it's fair to rely on this term to decline Mr B's claim because he blew over the legal limit of 35mg at the roadside. It's said it understands Mr B wasn't charged by the police on the basis that he blew under the legal limit on the tests at the station. But it's said this term doesn't require him to be charged or convicted for being over the legal limit, just found to be.

Advantage is correct here; its terms doesn't require a conviction or charge. Its burden of proof is also different to the one required for a conviction. Advantage's burden of proof is the balance of probabilities, whereas the court's – if Mr B were charged - is one of beyond reasonable doubt.

Here I'm satisfied Advantage is reasonably relying on its policy term. It's said the fact that Mr B blew over the legal limit at roadside, and was then arrested, coupled with the results he blew at the station (35mg, 34mg and 32mg) being very close to that legal limit means that it's more likely than not that Mr B was over the legal limit at the time of the incident. I'm satisfied that's a reasonable conclusion to draw.

It follows that anything it's paid in relation to fixing Mr B's car, it can try to recover from Mr B.

Authorising repairs

From what I've seen, Mr B initially said he blew under the legal limit. I'm satisfied Advantage was therefore reasonable to authorise the repairs when it did. At that point it had no concerns as to the validity of the claim, or any reason to have concerns.

It was only after it had authorised repairs that it found Mr B blew over the legal limit. Once it found this out, I'm satisfied it acted within a reasonable time to wind down the work.

I'm satisfied the compensation paid of £30 is reasonable. Although this is a small amount, I don't think the impact of telling Mr B the repairs hadn't started, then correcting that the next

day is enough to warrant more than this.

The impact of carrying out the repairs

I understand Mr B is unhappy and thinks the repairs being carried out – and being charged for them – has put him in a worse position. So, while I think Advantage's actions were reasonable, I've considered whether they've put Mr B in a worse position as he thinks they have.

I'm not persuaded that's the case. Mr B's car is on finance, so he owes the balance of that finance agreement to the lender. He'll owe more on that finance the less the car is worth at the point he hands it back. So if Advantage didn't repair the car, it would be worth significantly less than it would be in its repaired state, so Mr B would owe more to the finance company.

I understand we'll never know for certain exactly what the finance company would have valued Mr B's car at unrepaired, and therefore we'll never know what the balance on the finance would have been. But I'm not persuaded it would have been less than what Mr B is currently liable for, both in terms of the repair cost to Advantage, and the finance on his car.

I appreciate too that Mr B has said he could have repaired the car for less, but I've not been provided anything persuasive to support that assertion. I understand he had difficulty getting quotes from repairers because the car was already repaired. But Mr B has also said some of those repairers couldn't have done the work, or that they'd have looked to write the car off. I don't consider either of those situations to be any more beneficial to Mr B than the one he's currently in.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 April 2025.

Joe Thornley
Ombudsman