

## **The complaint**

Mr E complains about the service he received from Advantage Insurance Company Limited (Advantage) when dealing with a third-party claim.

## **What happened**

Mr E held car insurance underwritten by Advantage.

In July 2022, Mr E was involved in a motor incident. Advantage say that it became clear during the consideration of the claim that Mr E was driving under the influence of alcohol.

They said the policy didn't cover any claim if an accident happens while someone named under the policy is driving under the influence of alcohol. So, they declined the claim. Advantage also explained to Mr E that if any third-party made a claim against the policy (as a result of the accident) they would cover these under the Road Traffic Act 1988 (RTA) and can ask Mr E to repay these costs.

Advantage then contacted Mr E in September 2024 to let him know they were looking to recover costs from him of approximately £40,000. Mr E was unhappy and brought his complaint to our service for an independent review. He didn't think it was fair that he was being asked for this amount, more than two years after the incident. He also didn't think the amount was fair, if it had increased due to delays that weren't his fault.

Our investigator looked into it, she said that Advantage were entitled to attempt to recover costs. She noted a new offer from the business to Mr E of £500, for delays, and thought this was fair.

Mr E didn't agree, so the case has been passed to me to decide.

## **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 agree with the outcome reached by the Investigator. I'll explain why.

Within the policy booklet, under 'General Exceptions' it says:

*"Alcohol and drugs -*

*You're not covered if an accident happens while you or anyone entitled to drive under your 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*
- *Doesn't provide a sample of breath, blood or urine when required to do so, without lawful reason."*

Mr E hasn't disputed that he was over the prescribed limit for alcohol at the time of the incident. I am satisfied that based on the above, Advantage acted fairly in not considering any claim for Mr E (reducing his cover to third-party only). I am also satisfied that Mr E should have been reasonably aware of this through the term above.

Elsewhere in the policy under general conditions, it also says:

*"In all the circumstances listed in general exceptions and general conditions, no cover will be provided to you under the Policy. Instead, your Insurer's liability will be restricted to meeting the obligations as required by Road Traffic Act or alternative laws that apply in the country in which the loss occurs. In such circumstances, Insurers may seek to recover from you, or the driver, any sums paid by the Insurer to discharge that person's liability, whether in settlement or under a court judgement."*

The RTA requires insurers to pay out third-party claims, even where the policyholder/ driver concerned is not covered under the policy because of a policy term - as is the case here. The RTA also allows insurers to recover the costs of meeting third-party claims in those circumstances.

However, this only applies when a county court judgement is issued, which hasn't in this case. Advantage have instead settled with the third-party insurer prior to court. In this situation, we would expect Advantage to have asked Mr E to complete an indemnity form, allowing Advantage to take over and settle the claim, prior to any recovery.

I haven't been provided with any evidence that this was done on this occasion. However, in settling the third party's claim, Advantage have more likely than not sped up the claims process and reduced potential costs (including legal costs). So, I don't think Mr E has lost out by Advantage not asking for a completed indemnity form as we would expect.

Whilst I find that Advantage are entitled to recover the costs they have paid out to the third-party insurer, it is not my role to decide whether the costs are fair. However, I can look at whether Advantage have acted fairly and reasonably when agreeing to pay them. I think they did. Firstly, approximately £20,000 was paid as repair costs. I can see Advantage questioned whether the car should have been written-off and had their own engineer review the repair bill and decide it was reasonable.

Secondly, the third-party insurer initially invoiced for approximately £50,000 of hire costs. Advantage challenged this. They reduced the period they would pay by about 100 days, for delays caused by the repairing garage and a lack of necessary equipment (They did note that the extended period of hire was in part due to a delay in parts availability). They also reduced the daily rate they would pay by about 15%, by instead insisting on a comparable vehicle. They agreed on reduced hire costs of approximately £20,000 and I think they acted fairly here and in the interests of Mr E.

Advantage are also attempting to recover approximately £1,000 they have paid out for damage to a telephone pole. I have seen a note where Mr E has suggested he already paid this. However, I haven't seen any more evidence to show this. I would expect Mr E to provide this to Advantage before they can consider whether Mr E is still liable for this amount. I am glad to see that Advantage have also offered to review an income and expenditure form from Mr E before agreeing to a payment plan for the outstanding amount.

Mr E is understandably unhappy that he didn't hear from Advantage for almost two years after the incident, until they started recovery action. Advantage have explained this delay. The third-party took almost a year to complete repairs. There was also several months spent disputing costs and I have been provided with evidence to show the communication trail during this time. However, whilst I am satisfied that the time period was unavoidable. Advantage could have done more to communicate with Mr E and manage his expectations. Not doing so, meant considerable distress following a large, unexpected bill.

Advantage offered Mr E £500 for the impact of this and not being in contact with him before September 2024. I know this will have been very shocking for Mr E and I can see the impact this had on him through the notes and contact on the file. I think £500 fairly recognises this (taking into account that Mr E was always going to have to repay the costs) and Advantage should pay the £500 (or deduct it from the amount owing), if they haven't already.

In summary, Advantage are entitled (and acting fairly) in recovering the costs from Mr E they have paid to the third-party insurer. Whilst they should've asked Mr E to complete an indemnity form, he hasn't been disadvantaged by them settling on his behalf and have acted fairly in reducing the liability. However, they should've done more in communicating with him. Not doing so, caused him considerable distress and so the offer of £500 is a fair one.

### **My final decision**

For the reasons set out above, I find that the offer from Advantage Insurance Company Limited of £500, to put things right for Mr E, is a fair one.

Advantage Insurance Company Limited should now pay Mr E the £500 (or deduct it from the amount owing), if they haven't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 26 March 2025.

Yoni Smith  
**Ombudsman**