

The complaint

Mrs B and Mr B complain about the way Advantage Insurance Company Limited ('Advantage') handled a claim they made on their motor insurance policy.

Mrs B 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 'Mrs B' throughout this decision.

What happened

Mrs B held a motor insurance with Advantage. She was involved in a road traffic accident in April 2023 – so she contacted them to make a claim under her policy. Advantage instructed a firm of solicitors (who I'll refer to as 'C' in this decision) to handle the legal claim. Mrs B says she was contacted by C who provided her with access to a dashboard on their website to keep track of the claim.

Mrs B then says Advantage instructed another firm of solicitors (who I'll refer to as 'K' in this decision) to take over the handling of her claim in September 2023. Mrs B says she received an email from K advising her of this.

The third-party insurers started a court claim in October 2023 and K said they opened a defence file and sent a witness questionnaire to Mrs B via post to obtain her accident circumstances. Mrs B says she received this letter and emailed it back to K – but the email bounced back. She says she subsequently checked the online dashboard of C to check the status of her claim but was told there was nothing further she needed to do.

However, K hadn't received the information they needed from Mrs B – and they said they made further attempts to contact Mrs B by phone in November 2023. As they heard nothing back – K filed a defence stating they didn't have instructions from their client. Mrs B hadn't heard anything further, so she contacted Advantage in February and April 2024 but was told the case was being handled via court proceedings. However, in May 2024, Mrs B received an email telling her the claim had been settled. Unhappy with this outcome – Mrs B raised a complaint to Advantage.

Advantage considered the complaint but didn't uphold it. They said they had made it clear that K was handling the claim and Mrs B had been contacted in November advising her of the ongoing court procedure and that if they didn't hear back from her within seven days, they would need to settle the claim. They felt K had acted in Mrs B's best interests and in accordance with their professional standards. Unhappy with Advantage's response to her complaint – Mrs B brought it to this Service.

An Investigator looked at what had happened but ultimately didn't recommend the complaint should be upheld. He said while Mrs B had been checking the online portal for C – Advantage had reasonably made her aware that K was actually dealing with the matter, and that she'd confirmed receipt of letters from them explaining this. He also said there was an opportunity for Mrs B to query why her emails had bounced back from K with either Advantage or K directly but there was no evidence to suggest this was done. The

Investigator concluded that K had made sufficient and necessary attempts to contact Mrs B before deciding to settle the claim.

Mrs B didn't accept the Investigator's outcome. She said when she'd spoken to Advantage on the phone in February and April 2024, she was told the claim was ongoing at court so Advantage should have alerted her to the fact that K hadn't received her replies. And she said there was no proof of her receiving the letter from K which explained they would be settling the claim if they didn't hear back from her within seven days of receipt. She said she wanted Advantage to reimburse her policy excess and mark the claim as 'non-fault' as the fault claim would have an impact on her premiums going forwards.

As Mrs B has asked for an Ombudsman to consider her complaint – it's 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.

I should start by explaining I've only summarised the background to this complaint, so not everything that has happened or been submitted is set out above in full. I've done this in order to focus on the key issues I need to think about in order to reach a fair and reasonable outcome. But I'd like to reassure the parties that I've read and considered everything that has been provided as part of the complaint.

The starting point is what Advantage is required to do under the policy's terms – which say:

"When defending or settling a claim, your insurer is entitled to instruct the solicitors of their choice to act for you in any proceedings. If they feel it's appropriate, your insurer will be entitled to admit liability, for the costs covered under this policy on behalf of you or any person claiming indemnity under the policy."

This term essentially gives Advantage the right to take over and settle a claim on Mrs B's 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 racking up large, unrecoverable costs when it's unlikely they will be able to recover the costs from another party. As this is a common term in most insurance policies, I don't find this to be unreasonable – provided Advantage applied it fairly.

It's not in dispute that Mrs B was made aware that K was taking over the handling of her claim in September 2023. While I acknowledge that the previous solicitor's website still showed the claim as open – I think Advantage, through K, did enough to make Mrs B reasonably aware C was no longer handling the claim for her.

I also think this is supported by the fact that Mrs B confirms she received the witness questionnaire from K in October 2023 – and she says she returned this in November 2023 but the emails bounced back. At this stage, I also think that it would have been prudent for Mrs B to speak to K or Advantage directly to outline these issues. But Mrs B checked the website dashboard for the previous solicitors instead – and I don't find that this was something Advantage led her to do, so I can't say they acted unfairly here. I also can't hold Advantage responsible for messages that appeared on C's website dashboard - because they had already explained to Mrs B that K were handling the claim and Mrs B had confirmed she received correspondence from them directly.

K didn't hear back from Mrs B despite their chasers via post and phone. I appreciate Mrs B says there's no proof she received this but that's not the relevant test for me to consider here. I've seen copies of the letters K sent and I'm satisfied these were sent out to Mrs B to respond to. It seems Mrs B did receive some letters but didn't receive others – so I think it's very unfortunate that she appears to have been let down by the postal system. But either way, I don't think Advantage can be blamed for Mrs B not receiving some of the letters that K sent. I can also see K tried to call Mrs B via telephone in November 2023 - but Mrs B says she didn't get these calls.

Ultimately – I think it was fair and reasonable for Advantage to settle the claim in the way they did when Mrs B hadn't gotten back in touch with K. I do recognise and acknowledge Mrs B may have been confused over the process that was happening – but I find that she was given sufficient information to be involved in the claim and could have contacted K or Advantage directly when her emails bounced back.

In respect of the information Advantage gave Mrs B when she did call them on the phone in February and April 2024 – I appreciate this would have been frustrating for her and in hindsight she recognises the information given wasn't correct – because the claim had already been settled at that point. However, I don't consider this makes a material difference to the outcome of this complaint. At the time Mrs B spoke to Advantage, they understood that K were dealing with the claim, and it was established that Mrs B was in contact with K. As that was accurate at the time of the call, I don't think there's evidence of poor service in relation to this issue.

Finally, I can see Mrs B has outlined how having a fault claim will affect her premiums going forwards. I recognise Mrs B has suffered an unfortunate loss which would have had an impact on her. But I can see that Advantage actually settled the third-party claim on a 'without prejudice' basis in order to avoid further costs. I think this was fair and Advantage dealt with this claim in line with the relevant policy terms and industry practice.

Advantage have also explained that the 'without prejudice' settlement they made means they could look to try and recover Mrs B's claim costs from the TPI – but this would require Mrs B's cooperation going forwards to allow them to do this. Having considered this approach, I find Advantage have acted reasonably, so I won't be directing them to do anything further.

My final decision

For the reasons given above it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 23 April 2025.

Stephen Howard

Ombudsman