

The complaint

Mrs B complains about how Advantage Insurance Company Limited (Advantage) dealt with a claim under her motor insurance policy, deeming it to be a fault claim. Mrs B also thinks the third party claim was exaggerated and should not have been settled by Advantage.

References to Advantage in this decision include their agents.

What happened

In November 2023 Mrs B was involved in a collision with a third party vehicle, while reversing out of a parking space. She contacted Advantage to tell them about the incident. Hastings considered the circumstances of the collision and accepted liability. The third party made a claim for damage to their vehicle, with Advantage subsequently making payments to the third party (their insurer) for damage to the vehicle (as a total loss) in December 2023 and car hire in January 2024. Given the damage to her own vehicle was slight, Mrs B decided not to pursue a claim. The third party also made a personal injury claim, which Advantage rejected.

Following the personal injury claim Advantage raised a dispute for causation of the third party damage and engaged a firm (R) to investigate the claim. In turn, R appointed an engineer (AIAL) to inspect the damage to Mrs B's vehicle in January 2024. AIAL concluded the damage was very light impact damage. AIAL also considered a report on the third party vehicle provided by a separate engineer (OE) in December 2023. OE's report didn't include photographs of the damage to the vehicle, stating there was moderate damage to the rear bumper and quarter panel. OE assessed the estimated cost of repair (£3,592) exceeded the pre-accident value of the vehicle (£3,230) which made the vehicle uneconomical to repair.

AIAL also noted the magnitude of damage on the two vehicles differed (very light on Mrs B's vehicle but moderate on the third party vehicle). AIAL concluded the apparent level of damage on the third party vehicle wasn't consistent with the damage on Mrs B's vehicle. AIAL further concluded the third party vehicle had pre-existing damage in the area affected by the collision. AIAL recommended Advantage request images of the damage to the third party vehicle for further review.

Mrs B considered claims from the third party for damage to be exaggerated and provided photographs of the third party vehicle which she said showed pre-existing damage. However, having settled the third party claim for the vehicle damage and hire car costs before AIAL's inspection, Advantage subsequently closed the claim after six months in July 2024. Mrs B was unhappy Advantage settled the claim at what she considered to be an inflated amount, given the impact on her own claims record, which in turn affected her premium. So, she complained.

In their final response Advantage didn't uphold the complaint. They referred to the accident circumstances, saying as Mrs B was reversing at the time of the collision, the onus was on her to ensure it was safe to do so without impeding or colliding with another road user. So, they concluded it was a fault claim against Mrs B. As such, they were obliged to accept the claim for damage and hire costs from the third party. But they rejected the claim for personal

injury. As no further contact was received from the third party, the claim was closed, though they were continuing to seek images of the third party vehicle, to consider disputing the third party damage claim.

Mrs B then complained to this Service. She was unhappy at Advantage settling the third party claim, at what she considered to be exaggerated amounts. She didn't think Advantage properly defended the claim against what she considered fraud. She thought Advantage should have requested photographs from the third party engineer and disputed the extent of the damage to the third party vehicle. She wanted Advantage to seek to claw back payments to settle the third party claim, to mitigate the impact on her own future premiums.

Our investigator upheld the complaint, concluding Advantage hadn't acted fairly. They didn't think it reasonable for Advantage to settle the third party claims without dispute, given the conflicting evidence from the engineer reports, lack of further evidence from the third party and concerns about the personal injury claim (which Advantage rejected due to fraud concerns). Advantage should have rejected the third party claim in its entirety. The investigator wasn't persuaded Advantage completed a satisfactory investigation of the claim before settling the claims, based on the limited engineer report from OE. To put things right, Advantage should record the claim (against Mrs B) as notification only and recalculate the premium subsequently charged to Mrs B. They should reinstate her No Claims Discount (NCD) and pay £100 compensation for distress and inconvenience.

Advantage disagreed with the investigator's view and asked that an ombudsman consider the complaint. They said Mrs B was at fault for the accident. There would always have been costs associated with the third party vehicle and at the present time the claim was open and ongoing. Should the costs associated with the claim change, they would update Mrs B, but as she was at fault they would always look to settle the claim from the third party. In handling the claim they were waiting on information from the third party and their representative, which they had chased.

Advantage acknowledged the claim costs may have seemed inflated but had been reviewed by their claims department and had they any concerns they could have raised them to the third party. The hire car costs were covered on the basis they had accepted liability, and they had settled the invoice presented. It was common insurance industry practice to settle these costs where fault was accepted. AIAL thought damage to the third party vehicle appeared excessive but could not be 100% certain and weren't disputing there would have been some costs involved for the third party vehicle. Advantage couldn't record the claim as notification only where Mrs B was at fault. They felt the £100 compensation unwarranted.

Our investigator considered Advantage's response and accepted the £100 compensation may not be appropriate but maintained their view the claim should be recorded as notification only, citing legislation that required a primary claim to be rejected in its entirety where a fraudulent claim (in this case for personal injury) had been presented, including any element of the primary claim where the claimant had not been dishonest.

Advantage maintained their disagreement with the investigator's view, saying had AIAL concluded there was no damage to the third party vehicle, they would have been in a position to close the claim as notification only.

In my findings I concluded that, without any independent evidence about what happened, such as CCTV, dashcam or witnesses, then it wasn't unfair or unreasonable for Advantage to deem the accident to be a fault claim against Mrs B and accept 100% liability.

I then considered whether it was fair and reasonable for Advantage to cover the costs of the claim from the third party. Looking at the specific circumstances of the case, then while

Advantage rejected the personal injury claim, the report from OE supported the claim for damage to the third party vehicle. And while Advantage had concerns about the extent of the damage, the circumstances of the accident and Mrs B being liable for the accident meant it was always likely they would have incurred some costs in settling the claim and there would have been some damage to the third party vehicle. Advantage considered the report and decided to settle the claim, albeit appointing R and seeking further evidence.

On the hire costs, Advantage paid on the basis of an invoice submitted by the third party. As the costs were supported, then Advantage had to take a decision on whether to accept them. I noted Advantage had the right to settle claims as they see fit under the policy and in the circumstances I didn't think their decision unreasonable, particularly given the prospect of litigation should they refuse to accept the claim, in a situation where they had accepted 100% liability for the accident.

Because I reached different conclusions to our investigator, I issued a provisional decision to provide both parties the opportunity to consider matters further. This is set out below.

What I've provisionally decided – and why

I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

My role here is to decide whether Advantage have acted fairly towards Mrs B.

The main issue in Mrs B's complaint is Advantage accepting liability for the accident and settling the third party claims for damage to their vehicle and hire car costs. Mrs B believes the costs were exaggerated (if not fraudulent), maintaining the damage to the third party vehicle was slight and there was pre-existing damage. She also points to a personal injury claim presented by the third party (but rejected by Advantage). Advantage say the accident circumstances are such that Mrs B would be held to be at fault, as she was reversing out of a parking space when she collided with the third party vehicle. In those circumstances, they would have to accept the third party damage and hire car costs as presented.

In considering the complaint, it's important to note the role of this Service isn't to assess claims and determine whether or how they should be settled. Rather, it's to assess whether the insurer has acted fairly and reasonably in their assessment of a claim and its settlement.

The first aspect of the case is Advantage's decision to deem the claim to be a fault claim against Mrs B and to accept liability for the accident. After considering the circumstances described by Mrs B when notifying them of the accident, Advantage accepted 100% liability, communicating this to Mrs B in a letter in November 2023 and in a similarly worded letter in December 2023. Advantage also refer to the requirements of the Highway Code which mean the onus is on the reversing party to ensure it is safe to complete the manoeuvre without colliding or impeding another road user.

Without any independent evidence about what happened, such as CCTV, dashcam or witnesses, then I don't think it was unfair or unreasonable for Advantage to deem the accident to be a fault claim against Mrs B and accept 100% liability.

Having accepted liability, Advantage say they have a duty to cover the costs presented by the third party. While they are entitled to review the costs presented and the evidence supporting them, to decline them outright would (Advantage say) risk litigation from the third party, in turn increasing costs. I've also noted the policy terms and conditions provide for Advantage to settle claims made under a policy, including from third parties. The policy booklet includes the following wording about claims:

- ii) *We are entitled to process your claim in its entirety as well as conduct the defence or settlement of any claim and/or admit negligence for any accident or claim on your behalf.”*

Similar wording is found in most motor insurance policies, and I've concluded Advantage acted within the policy terms in accepting liability for the accident.

The question then becomes whether they acted reasonably in settling the claim from the third party for damage to the vehicle and hire costs.

Mrs B says the costs were exaggerated and the damage to the third party vehicle minor, with pre-existing damage. From what I've seen, having accepted liability for the accident, Advantage received a personal injury claim from the third party in mid-December 2023, at which point Advantage asked R to assist them in their investigation of the claim. In turn R commissioned AIAL to inspect Mrs B's vehicle for damage and also review the engineer report from the third party engineer (OE). AIAL couldn't inspect Mrs B's vehicle until January 2024, by which time Advantage had settled the claim for damage to the third party vehicle (£2,971.60 as a total loss) and hire car costs (invoiced at £1,329).

As set out above, the reports from OE and AIAL differ in their assessment of the damage to the third party vehicle. Taking OE's report first, dated mid-December 2023, it notes it is a desktop inspection from the information available. The report notes the damage as:

“The vehicle has suffered moderate accidental damage to the left hand rear bumper and moderate accidental damage to the left hand rear quarter panel.”

The report includes a repair estimate of £3,592.42 based on a named repairer's assessment of the parts, labour and other charges. The report also notes the poor condition of the vehicle, and this is reflected in the vehicle valuation of £3,230 (compared to a retail value of £5,370 for the vehicle mileage).

For its part, the report from AIAL reaches different conclusions. On the damage to Mrs B's vehicle it states:

“Upon inspection this vehicle had sustained very light impact damage glancing across the RH 'wrap' section of the rear bumper.”

And on reviewing the report from OE on the third party vehicle, it states:

“The magnitudes of damages sustained on these vehicles differs. Very light on the insured's vehicle versus moderate on the TPV...”

There is evidence that contact has been made between these vehicles. However, the apparent levels of damage on the third party vehicle are not consistent with the damage found on the insured's vehicle.

We would request sight of a full set of images of the damage to the third party vehicle in order to review further.”

The report cast doubt on the severity of the damage to the third party vehicle, particularly in the absence of images of the vehicle. Advantage (through R) requested images but, from what I've seen, none have been provided. Given the elapse of time and the fact that Advantage settled the claim for damage, I think it very unlikely any further response from the third party will be received (I note Advantage closed the claim in July 2024, though they say in response to our investigator's view that the claim is open and ongoing).

Looking at Advantage's claim notes, they indicate concerns over potential fraud in the claim from the third party, leading to their decision to 'raise causation' and appoint R to assist with investigation of the claim. But I can also see reference, in respect of the hire car charges claim from the third party to a 'Protocol Agreement' within the insurance industry which meant Advantage were contractually obliged to settle the invoice when received (January 2024) even if the claim were to be considered to be fraudulent or liability for the claim was rejected. It is described as a 'non-recoverable commercial decision' (to pay the invoice) and not an admission of liability.

On the payment of the claim for damage to the third party vehicle, this appears to be based on the report from OE, which concluded it was uneconomical to repair given the estimated cost of repair compared to the vehicle value. Advantage say that having accepted liability for the accident, they were obliged to settle the third party vehicle damage. And while they had the report from AIAL, it wasn't definitive that there was no damage to the third party vehicle, in the absence of images of the vehicle.

Advantage also say they had a duty to settle the third party vehicle damage claim, as otherwise they would risk litigation in a case where they had accepted liability for the accident. And having settled the claims, Advantage say they wouldn't be able to seek reimbursement from the third party if they (Advantage) cannot be certain the third party vehicle damage was pre-existing or exaggerated.

I've considered what Advantage have said in the context of our approach as a Service where claims are made (including by a third party) that include at least some element that is fraudulent. In this case, the personal injury claim from the third party was rejected given the accident circumstances (low speed, reversing and light or moderate damage). From what I've seen, Advantage acted reasonably to reject the personal injury claim, indicating they considered it to be fraudulent (or at least exaggerated). From what I've seen, while this was their stance, I can't see they had clear evidence or put the accusation to the third party. So, while they had suspicions, they weren't in a position to decline the whole claim based on the evidence available to them.

In law, if a claim is exaggerated, an insurer doesn't have to pay out anything at all – even for the genuine parts of a claim. This means an insurer can reject the entire claim, including any elements that may be genuine (the law doesn't separate the genuine parts from the dishonest parts). This is because otherwise a fraudulent claimant would be in a 'win-win' situation. If the exaggerated claim was successful (the personal injury claim in this case) the claimant would gain. But if unsuccessful and the genuine elements paid (potentially the vehicle damage and hire car costs) then the claimant would have lost nothing by fraudulently exaggerating their claim.¹ The relevant legislation is the Criminal Justice and Courts Act 2015 (Section 57) which states:

"This section applies where, in proceedings on a claim for damages in respect of personal injury...the court is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to the primary claim or a related claim...the court must dismiss the primary claim."

"This includes the dismissal of any element of the primary claim in respect of which the claimant has not been dishonest."

¹ The relevant case law is the 'Star Sea' case, *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd (The "STAR SEA")* [2003] 1 AC 469.

Looking at the specific circumstances of the case, then while Advantage rejected the personal injury claim, the report from OE (which included reference to a repairer's estimate of the cost to repair the damage) supports the claim for damage to the third party vehicle. And while Advantage had concerns about the extent of the damage – hence their decision to appoint R and dispute causation – the circumstances of the accident and Mrs B being liable for the accident mean it was always likely that they would have incurred some costs in settling the claim from the third party and there would have been some damage to the third party vehicle. Advantage considered the report and decided to settle the claim, albeit with the action they took in appointing R and seeking further evidence.

Similarly with the hire costs, which Advantage paid on the basis of an invoice submitted by the third party. As the costs were supported, then Advantage had to take a decision on whether to accept them. As I've noted, Advantage have the right to settle claims as they see fit under the policy and in the circumstances I don't think their decision unreasonable, particularly given the prospect of litigation should they refuse to accept the claim, in a situation where they had accepted 100% liability for the accident.

Mrs B is concerned about the impact on her premiums from having a fault claim recorded against her, with the costs of the claim met by Advantage. I appreciate that view, but given it was reasonable for Advantage to accept 100% liability for the accident, then having a fault claim recorded would always have been likely to affect the cost of insurance for her in the future. And as I've noted, having accepted liability for the accident, it was likely Advantage would have incurred some degree of costs in respect of the claim. Rejecting the costs claimed by the third party – but not the personal injury claim – would have risked litigation and the potential for further costs, in addition to the costs claimed. Due to the amounts involved, it may be unlikely there would be any (or significant) detriment to future premiums. Taking all these points together, then I've concluded Advantage haven't acted unfairly or unreasonably towards Mrs B. So, I won't be asking them to take any further action.

My provisional decision

For the reasons set out above, it's my provisional decision not to uphold Mrs B's complaint.

Mrs B responded to maintain her view the damage claimed by the third party to their vehicle was exaggerated, providing photographs to support her view. She had raised her concerns about fraud when she first notified Advantage about the accident and why a more detailed report on the third party vehicle wasn't obtained. The third party had also twice fraudulently tried to claim for personal injury.

She thought Advantage had been too quick to settle the claims without a thorough investigation and should have raised causation sooner, likely to have led them to settle the claim at lower cost. She wasn't asking that record of the claim be removed, but that she hadn't caused the extent of damage claimed by the third party or caused any personal injury.

Advantage didn't provide a response by the deadline requested.

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.

My role here is to decide whether Advantage have acted fairly towards Mrs B.

On the points made by Mrs B, I acknowledge the strength of her feeling about what happened and her views about the claims brought by the third party (and what she's said

about their behaviour at the time of the accident and subsequently). However, my role is to consider how Advantage assessed the claims, given they accepted Mrs B's liability for the accident (Mrs B says she has never disputed reversing into the third party). In those circumstances they were obliged to consider the claims made by the third party and exercise their discretion, as the policy terms provide, to defend and settle the claims.

As I set out in the provisional decision, they rejected the claim(s) for personal injury, which they considered inconsistent with the circumstances of the accident. However, with the claims for damage to the third party vehicle and hire car costs, they were presented with, respectively, an engineer report including a repair estimate and an invoice for the costs. So, the costs were evidenced, notwithstanding what Mrs B has said about the pre-existing damage to the third party vehicle. Advantage would have had to consider whether they had grounds to challenge the costs and – should they have refused to settle the claims – the risk of litigation and potentially further costs.

And while they had concerns over potential fraud, leading to their decision to 'raise causation' and appoint R to assist with investigation of the claim, while they had the report from AIAL, it wasn't definitive there was no damage to the third party vehicle. Having settled the claim, Advantage wouldn't be able to seek reimbursement from the third party if they couldn't be certain the damage was pre-existing or exaggerated. Even had they raised causation sooner, I'm not persuaded it would have led to a different outcome. On the hire car charges, Advantage also refer to a 'Protocol Agreement' which meant they were contractually obliged to settle the invoice when received, as a 'non-recoverable commercial decision.'

So, while I appreciate Mrs B's concerns, I haven't changed my conclusion Advantage didn't act unfairly or unreasonably in their settlement of the third party claims.

My final decision

For the reasons set out above, it's my final decision not to uphold Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask to accept or reject my decision before 2 July 2025.

Paul King
Ombudsman