

The complaint

Miss K complains that Advantage Insurance Company Limited unfairly refused to pay a claim on her motor insurance policy and then cancelled it.

Miss K's partner – Mr W – has helped her to bring this complaint. But, for ease of reading, except where I think I need to refer to Mr W explicitly, I will treat his comments as being Miss K's.

Miss K's policy is branded in the name of the insurance intermediary which administers it. But, as Advantage is responsible for claims decisions and complaints about those, I will only refer to it within this decision.

What happened

In November 2024 Miss K crashed her car into a parked vehicle. The police were called. They took Miss K to hospital where she had blood tests. She claimed on her policy. Her car was deemed a total loss.

Advantage called Miss K for details of the incident. As she has limited English, Mr W answered many of Advantage's questions on her behalf. Mr W confirmed that Miss K was breathalysed at the scene and said he believed the reading was over the legal limit for alcohol. Advantage told Mr W that in those circumstances it would not pay Miss K's claim. It later told her that as she was in breach of her policy's terms and conditions it was cancelling her policy. It then said it was seeking to recover £5,954.11 it had paid out from her.

In January 2025, the police confirmed that Miss K's blood tests were below the legal limit for alcohol and it was not prosecuting her for anything.

Miss K told Advantage about the blood test results but it didn't change its stance. Miss K complained but Advantage didn't uphold it. She brought her complaint to the Financial Ombudsman Service. One of our investigators looked into it. She didn't think Advantage had dealt with Miss K fairly. So she said it should:

- Settle Miss K's claim for the total loss of her car.
- Remove the cancellation marker from Miss K's records.
- Provide her with a letter confirming the cancellation decision had been reversed.
- Pay Miss K a total of £500 for her distress and inconvenience.

Advantage didn't agree with our Investigator's complaint assessment. As the matter has not been resolved it's been passed to me to determine.

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.

Advantage's policy says that it will not provide cover where the driver uses the car "while unfit through alcohol...". It seems that Advantage has decided that as Mr W said he believed Miss K blew over the blood alcohol limit when breathalysed then she must have been unfit to

drive. As such it has: refused to pay her claim, cancelled her policy and sought to recover its outlay from her. But I don't think that was fair.

It would not be necessary for Miss K to be found guilty of driving while over the legal alcohol limit for Advantage to conclude that she was unfit to drive. But I would expect to see some evidence, beyond anecdotal evidence of a breathalyser result, in order for me to conclude that Advantage had dealt with the matter fairly.

In this instance Advantage hasn't ever received confirmation from the police of what Miss K's breathalyser result was. And as far as I'm aware it hasn't made any enquiries of the police to establish whether or not Miss K was fit to drive at that time.

It seems that the only evidence Advantage has is Mr W's statement that he believed that Miss K blew over the legal limit on one breathalyser test. But that test is not conclusive that Miss K was unfit to drive, especially when breathalysers can return false positive results. As far as I understand things, roadside breath tests are not generally admissible in court as evidence that a person is unfit to drive. Also Advantage doesn't have the results of the test that was carried out at the scene. And while Miss K likely told Mr W she believed she'd failed it, as I've said above, her English is limited and she could have been mistaken.

In any event the blood tests confirmed that Miss K was not over the legal limit and she was not prosecuted for any offence. I haven't seen a police report or other details of how long after the accident the blood test was completed. So, the only evidence Advantage had to rely on that Miss K was unfit to drive was Mr W's comment that he believed she blew above the limit when breathalysed. I don't think this evidence was sufficient for Advantage to be satisfied that Miss K was unfit to drive.

Advantage has said that the fact Miss K was arrested is evidence that she blew over the limit. But it hasn't provided any evidence showing what she was arrested for. It's also said that the fact Miss K was taken to the hospital is evidence that she was unfit to drive. But Advantage doesn't know why the police took her to the hospital and it's just as likely this was to treat any injuries she sustained in the accident.

So Advantage has very little actual evidence that Miss K was unfit to drive. And the only really persuasive evidence here is the evidence from the police that said Miss K's blood test confirmed she was below the legal limit and it was not prosecuting her. So, overall, I don't think Advantage has done enough to show that Miss K was unfit to drive when the accident happened. Given that, I don't think she was in breach of her policy's terms. It follows that I don't think it was fair for Advantage either to decline Miss K's claim nor to cancel her policy.

So I've thought very carefully about what Advantage must do now to put things right.

Putting things right

I require Advantage to:

- Settle Miss K's claim for the total loss of her car, subject to the excess of her policy. And as Miss K's been without use of that money, in line with our usual process it should add simple interest to its claim settlement at the rate of 8% a year from the date of Miss K's claim to the date it pays her¹. When considering the claim it should refund any sums it has previously recovered from her for its outlay.
- Remove the record of the policy cancellation from external databases.

¹ If Advantage considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Miss K how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

- Give Miss K a letter to confirm that it cancelled her policy in error. It should also explain the breakdown of any premium refund it paid to Miss K on the cancellation of her policy.
- Pay Miss K £500 compensation for her considerable distress, upset, worry and inconvenience she has suffered which has lasted many months. I'm satisfied that's a sum that reasonably acknowledges the impact of Advantage's handling of things.

My final decision

For the reasons set out above I uphold this complaint. I require Advantage Insurance Company Limited to take the steps set out under the heading 'putting things right' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 18 November 2025.

Joe Scott
Ombudsman