

## The complaint

Mr Y complains that Advantage Insurance Company Limited unfairly refused a claim on his van insurance policy. It also told him he would need to reimburse it for its costs in settling the claim.

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

## What happened

Mr Y was in an accident, another vehicle hit the back of his van. Mr Y claimed on his policy. Advantage initially settled Mr Y's claim holding the third party driver to blame. It referred the matter to solicitors to pursue the third party's insurer for its claim outlay. After it did so, the third party insurer submitted dash cam footage of the incident. Advantage's solicitors said that having seen that footage they didn't think they could defend the claim.

Advantage accepted liability on Mr Y's behalf. It also said it thought Mr Y had caused the accident deliberately. So it said the policy didn't cover him and it asked him to repay its claim outlay of around £7,300.

Mr Y didn't think Advantage's action was reasonable. He brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. He didn't think Advantage had fairly sought to recover its outlay from Mr Y. So he said it wasn't reasonable for Advantage to pursue that. The Investigator added that Advantage should pay Mr Y £200 compensation for his distress and inconvenience.

Advantage didn't agree with our Investigator's complaint assessment. As the matter remains unresolved 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.

### *Did advantage fairly hold Mr Y liable for the accident?*

I'll explain that it isn't the role of the Financial Ombudsman Service to decide liability for an accident. Ultimately that's a matter for the courts. Rather than deciding liability my role is to look to see if insurers have acted in a fair and reasonable way.

I've had the benefit of viewing the dash cam footage the third party provided. That shows the third party approaching a mini-roundabout as Mr Y enters it from the right. Mr Y had to manoeuvre to ensure he didn't hit the third party's vehicle. Both drivers left the roundabout at the next exit with Mr Y in front. Mr Y gesticulated towards the other driver with his right hand out of the window. He then braked suddenly coming to a stop and the third party hit the back of his van.

I understand that Mr Y said that he braked because he thought he had to because of an animal crossing or potentially crossing his path. But having viewed the dash cam footage a number of times I don't find that argument plausible. There is no sign of anything in or approaching the road that would have caused Mr Y to brake. So I'm satisfied that Mr Y did

not have to brake to continue driving safely. And it appears to have been that action, braking unnecessarily, which caused the accident.

In those circumstances I can understand why Advantage's solicitors believed that if the matter went to court they would lose. So they chose not to defend the claim. And given that the solicitors will have expertise in such matters I think it was fair and reasonable for Advantage to rely on its solicitors expert opinion to accept that Mr Y was liable for the accident. So I am satisfied that Advatnage did fairly hold Mr Y liable for the accident.

*Is it fair for Advantage to recover its claim outlay from Mr Y?*

Mr Y's policy won't cover a situation where his van is used to deliberately cause loss, injury or damage. However, in order for Advantage to fairly apply a relevant policy exclusion it would need to demonstrate, on the balance of probabilities, that Mr Y deliberately drove in such a manner likely to cause damage, loss or injury. So I've thought very carefully about whether or not Advantage has reasonably demonstrated that a relevant policy exclusion applies.

As I've already said I don't find Mr Y's explanation that he was forced to stop because of an animal (or other event) persuasive. It seems to me that he made a choice to stop abruptly when it wasn't necessary. So I've gone on to think about whether when doing so, he was deliberately intent on causing, loss, damage or injury. On the balance of probabilities I don't think he was.

I think Mr Y's gesticulation when coming off the roundabout does indicate that he was cross with the third party driver. But that doesn't automatically mean he was intent on causing an accident. And I've heard a phone conversation where Mr Y is adamant that he didn't deliberately use his van in order to cause any form of damage. Also it's worth pointing out that Mr Y had already made a manoeuvre at the roundabout to prevent an accident from happening.

I do believe that his decision to stop suddenly would appear to have been anything other than wise. But the incident happened at a fairly low speed – around eight miles per hour at the point Mr Y braked – and Mr Y's pointed out that, generally, the onus on leaving a safe distance to stop rests with the driver following a vehicle in front. And it would seems likely that Mr Y almost expected, given the low speed and the distance between the vehicles – that the third party driver would be able to stop without a collision. After all, as I've already alluded to, The Highway Code requires drivers following another vehicle to allow adequate space and time to stop.

But if it was the case that Mr Y expected the other driver to be able to stop, his judgment was flawed. The third party didn't stop, in fact it looks like he didn't brake at all, and the accident happened. That wouldn't have happened if Mr Y hadn't braked unnecessarily. But, as I've already said I don't think that means Mr Y intended to cause the accident. And Advantage hasn't provided any evidence – beyond its suppositions – that was Mr Y's purpose when braking. He may well have been agitated by the third party's driving when entering the roundabout, but he had very little to gain from deliberately causing an accident. And having looked at the dash cam footage very carefully, I don't think that was necessarily what he intended. That's because, had the third party driver reacted more quickly as Mr Y perhaps thought would happen, the accident wouldn't have occurred.

I think it's reasonable to conclude that Mr Y's actions when braking suddenly were ill-advised. But, I'm not persuaded that Advantage has provided evidence which, on the balance of probabilities, convinces me that Mr Y had intended to deliberately cause an injury, loss or damage. In those circumstances I don't think it was fair for Advantage to say that the relevant policy exclusion applies and to seek to recover its outlay from Mr Y.

I'll add that Advantage has said that Mr Y's actions could be considered to be 'brake checking'<sup>1</sup> the third party driver. It said that could lead to drivers being penalised for dangerous driving. That may well be the case. But in this instance as far as I'm aware Mr Y has not been prosecuted for any driving offence. And as I've said above I'm satisfied that he didn't intend to cause an accident. So, while his actions could be considered by some as reckless, that's not the same as a deliberate attempt to cause a loss, injury or damage. If I was persuaded that was his intention I would have no hesitation in rejecting Mr Y's complaint.

However, as I'm satisfied that Mr Y didn't deliberately cause an accident I don't think Advantage's decision to pursue him for its outlay is fair. So I've set out how Advantage should put things right below.

### **Putting things right**

I require Advantage to cease any action to recover its outlay from Mr Y. And, as this matter has undoubtedly been a cause of acute stress regarding some considerable effort for him to sort out, I require Advantage to pay him £200 compensation.

### **My final decision**

For the reasons given 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 Mr Y to accept or reject my decision before 4 January 2026.

Joe Scott  
**Ombudsman**

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<sup>1</sup> This is where a driver deliberately brakes sharply and unexpectedly in front of another vehicle, usually in response to what they perceive as tailgating or aggressive driving.