

The complaint

Ms W has complained that solicitors instructed by Advantage Insurance Company Limited contacted her concerning a road traffic accident incident she was involved with in 2023 when she had insured her car under its motor policy.

Ms W is represented by Mr H but for ease of reference I shall just refer to Ms W throughout as far as possible.

What happened

This accident in which Ms W was involved happened in March 2023. Her car was a total loss which Advantage paid and she understood the claim was settled as non-fault in her favour.

In January 2025, Ms W received contact from a firm of solicitors instructed by Advantage who wanted her involvement in legal proceedings concerning this accident in 2023. Ms W was confused by this and felt she was being harassed as when she talked to Advantage's adviser she was also threatened with the claim then being changed to a fault claim. So she raised a complaint.

Advantage upheld her complaint and paid her £100 compensation for its adviser incorrectly threatening her.

Ms W remained dissatisfied and brought her complaint to us. The investigator thought Advantage had done enough to rectify the matter so she didn't think it should be upheld. Ms W disagreed so her complaint 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'm not upholding this complaint. I do understand and appreciate that Ms W will be very disappointed so I'll now explain why.

Before I start, I understand that there were problems with the settlement of Ms W's claim in 2023 and that Ms W also complained about that at the time. Advantage issued a final response letter to that complaint on 23 June 2023 upholding it and paying Ms W £400 compensation, giving her several options to conclude the matter. Given Ms W didn't bring any aspect of that complaint to this service within six months of the date of that final response letter, that means I can't consider any issues concerning the valuation of her car, whether it was correct it should have been deemed a total loss, the delay in having her car returned to her, whether her engineer could inspect the car, issues with the salvage agents instructed by Advantage and the complained of service failings. As, under our rules, those elements fall outside of my jurisdiction given Ms W didn't bring her complaint to us within six

months of that final response letter issued by Advantage. I also understand that Ms W later confirmed she was not complaining about these issues in this complaint.

So, in the normal course of events after a car accident where both parties were insured, each insurer will deal with its policyholder's claim for the damage to each their car. At the same time, dependent on the circumstances of how the accident occurred, each insurer will come to its own view on who it thinks might have been responsible for causing the accident. Sometimes it's possible to get agreement on who was at fault for the accident early on, other times there is a more entrenched disagreement and the matter might need to be dealt with in Court. This is standard industry practice. Further the policy permits this too, as it details the following:

'Your insurer has the right to:

- *Carry out the repair; and*
- *Take over and conduct the defence or settlement of any claim under the policy for its own benefit. This includes taking proceedings in your name, or in the name of any other person claiming under the policy, at its own expense. Save in respect of the excess, your insurer has the right to retain sums recovered in full insofar as they reflect the diminution in value of the vehicle. These actions may be taken in your name or the name of any insured person.'*

This is in every motor insurance policy in some form and details the insurer's right of subrogation which is an equitable right in law to ensure that the party responsible pays the costs. It should be noted that in deciding to buy this motor policy (or indeed any other policy) the consumer is deemed to have agreed to the policy terms too.

Here, Advantage didn't think Ms W was responsible for causing the accident. It thought the other driver was instead. So it wanted the other driver's insurers to reimburse it the costs it spent in settling Ms W's claim with her. As that wasn't happening, it instructed its solicitors to start making the case to take the other driver's insurers to Court in order to get this reimbursement.

On this basis Ms W then received the letter from the solicitors instructed by Advantage. I consider the letter from the solicitors to Ms W of 3 January 2025 adequately explained what was going on. The solicitors explained Advantage had asked them to *'get that money back from the responsible party (the other person's insurer)'*. It explained that they were trying to finalise the matter without having to issue Court proceedings and it explained what it was going to do as regards the other driver's solicitors and the possibility that if it wasn't agreed they would issue Court proceedings. It detailed that the policy allowed Advantage to do this too. It also explained what the potential role of Ms W might be and that they needed her to read the Client Care letter and frequently asked questions document and terms of business document, complete a Witness Questionnaire and a Form of Authority. It also explained that Ms W could include any other financial losses not covered by her policy, such as the policy excess, loss of earnings, injury or car hire costs. This is the standard approach taken by solicitors instructed by motor insurers in the UK where liability for the accident isn't agreed.

Sadly, Ms W thought it was a phishing email and reported it to Advantage on 3 January 2025. And even more unfortunately Advantage wrote to Ms W on 18 March 2025 telling her as she hadn't cooperated with its solicitors which meant it couldn't recover its costs with the other driver's insurers, so it was going to shut her claim as a fault claim. Ms W complained about this and Advantage wrote to her three days later explaining that this letter of 18 March was a mistake and apologised profusely. It then issued its final response letter on 5 April

2025 upholding her complaint over its communication to her of 18 March 2025 and paying her a further £100 compensation.

So in the first instance I don't consider Advantage did anything wrong in instructing its solicitors to recover the claim costs it paid to Ms W following the accident in 2023. This is standard insurance industry procedure. I also consider the letter from the solicitors appropriately explained why they were writing to her and what was needed. I can't see that it was expressed in a way that was harassing either. Secondly, it's correct that its letter to Ms W of 18 March 2025 was incorrect and I'm glad to see Advantage corrected that quickly by 21 March 2025.

In response to the investigator's view, Ms W's representative believed the solicitors didn't provide enough information in their letter to Ms W so he felt it was intimidating. And he felt it was wrong that both Advantage and the solicitors put Ms W in this situation. However it's standard in motor policies that insurers do have this right of subrogation against the other driver's insurers and as I detailed above the policy (along with every other motor policy) therefore makes provision for this. It's simply to get the other driver's insurers to refund Advantage the costs it paid to Ms W in relation to her claim, since Advantage was of the view given the circumstances of the accident that Ms W wasn't at fault for causing that accident and instead the other driver was.

So there is no issue that this sort of legal action is about issues to deal with Advantage's appointed salvage agents, or who did or didn't examine her car at that time, or indeed any delays in getting that clarified. There is also no notion that Advantage or its solicitors were involved in some sort of perjury issues either. Further given the solicitors had just been instructed to get the other driver's insurers to pay Advantage's outlay in dealing with Ms W's claim, there would have been no legal proceedings actually issued at that time or court dates arranged.

In any event Advantage since confirmed that the other driver's insurers capitulated and has now reimbursed its outlay to Ms W and the matter is now complete and closed. That means that Ms W's involvement is no longer required whatsoever.

So to conclude I don't consider Advantage or its solicitors did anything wrong in contacting Ms W in the way they did. I consider the solicitor's letter fully explained what was going on and why too. I consider the letter sent to Ms W on 18 March 2025 was inappropriate and incorrect. I'm happy that Advantage sought to correct this on 21 March 2025 too. I consider that the letter of 18 March 2025 would have certainly upset and distressed Ms W also. In view that Advantage corrected it within three days, I consequently consider its payment of £100 compensation to be reasonable also as it's in line with our approach to compensation which is more fully detailed on our website.

My final decision

So, for these reasons, 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 Miss W to accept or reject my decision before 20 May 2026.

Rona Doyle
Ombudsman