

complaint

Mr S is unhappy that Advantage Insurance Company Limited has dealt with an alleged claim under his motor insurance policy despite him saying he wasn't involved in an accident. He's also unhappy that his no claim discount with a new insurer is being affected.

background

Advantage says a third party alleged Mr S' car was involved in a multi vehicle accident. A photo's been provided which shows a car like Mr S' and with his car's registration number. A description of the driver was also given but he gave a different name to that of Mr S. It contacted Mr S who denied he was involved in the accident. But he couldn't say exactly where he was at the relevant time and admitted his car was used by other family members although they weren't insured to drive it under this policy. Its engineer had inspected Mr S' car and found no impact damage to its front or evidence of recent repair. Even so, Advantage agreed to deal with one third party's claim on a without prejudice basis. It considered on balance that Mr S' car was involved in the accident although Mr S hadn't been placed at the scene. It'd allowed Mr S' no claims discount as a goodwill gesture.

our adjudicator's view

Our adjudicator felt this complaint should be upheld as Advantage hadn't acted fairly. He said:

- Aside from a blurry photo of Mr S' car purportedly taken at the scene of the incident there's no evidence which clearly demonstrates Mr S or his car was involved in the collision. And Advantage's engineers inspected Mr S' car and said they couldn't locate any impact damage to the frontal area and the lights and panels in this area didn't appear to have been recently replaced or repaired.
- Advantage relies on the fact Mr S cannot prove he wasn't at the scene of the accident. That's not a reasonable stance for it to take as it's unlikely Mr S would retain proof of where he was unless he knew in advance he'd have to do so. Mr S says he wasn't there.
- The policy terms allow Advantage to settle a claim as it sees fit and it must use this discretion in a fair and reasonable way. But it hasn't done so here. Its investigation has only yielded an engineer's report indicating Mr S' car wasn't in a collision and it hasn't got a witness statement from one of the two third parties involved. Whilst understanding Advantage's decision to settle the third party claim on a without prejudice basis to avoid further costs, this isn't a fair and reasonable outcome for Mr S as there's no compelling evidence he caused the collision.
- So, Advantage should adjust the recording of the claim to notification only on Mr S' record. It's allowed his no claims discount but it should check whether any loading applied to his premium as a result of the claim has increased his costs and, if so, refund them plus interest. This had also been very frustrating for Mr S and Advantage should pay him £100 compensation for this.

Advantage didn't agree. In summary it said the photo of the car isn't blurry. In its investigator's opinion Mr S wouldn't have made credible witness in court especially as he's admitted to allowing family members to drive his car although they're not insured to do so

under his policy. If the third party insurers had started court proceedings it would've had little defence given the evidence available. It has insufficient evidence to prove Mr S' car isn't liable for the accident. It had no choice other than to mitigate its costs and settle the third party claim. It's allowed Mr S' no claims discount as a goodwill gesture.

my provisional decision

I issued a provisional decision in this complaint on 31 August 2017. In summary, subject to any further evidence and submissions from the parties, I wasn't minded to uphold the complaint.

Mr S doesn't agree. He says he understands Advantage has to investigate matters. But the photo of his car could've been taken anywhere and at any time. He disputes he said he lets other people use his car. He said he doesn't keep his car under lock and key and anyone could take it. He's not interested in the compensation but it's a matter of principal. Advantage shouldn't penalise him for an accident he wasn't involved in.

Advantage has confirmed it has nothing more to add.

my findings

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

When a third party alleged Mr S' car had been involved in an accident I think Advantage had an obligation to investigate what had happened.

A photograph was provided by a third party who I think is a credible witness. I agree with Advantage that this photo isn't blurry as our adjudicator suggested. It clearly shows a car of the same make, model and registration number as Mr S' car. In addition a third party queried the address given by the driver of Mr S' car as it was in a different city to that shown on a parking permit in a window of the car. I note that the parking permit related to a city where Mr S previously lived.

I think Advantage acted reasonably in concluding that the evidence showed Mr S' car was involved in the accident.

Even so Mr S hasn't been placed at the scene of the accident. He's consistently said he wasn't the driver of his car at the time. He says he was at home that week doing DIY but cannot prove he wasn't at the scene. He originally said he didn't authorise anyone else to use his car on the day in question.

Mr S now denies saying he allowed others to use his car. But he'd a call with Advantage on 30 December 2013. Its internal claim note records "*Asked anyone else has access to his car. He advised his cousin and father occasionally use it for local journeys [sic]. Asked if ph [Mr S] sure it could not have been borrowed when he was doing DIY at home he advised unsure but could make further enquiries*".

So, whatever Mr S' recollection is now, I think its more likely he told Advantage in that call that he let other family members use the car for local journeys, than not. And this was even though there were no named drivers on the policy.

I also note Mr S hasn't suggested at any stage that his car was stolen.

Advantage's engineers inspected Mr S' car and found no damage or signs of recent repair to its front. But neither that nor the fact that the car that was hit by Mr S' car was largely undamaged, necessarily proves Mr S' car wasn't in a minor accident.

Taking everything into account I think Advantage acted reasonably treating this as a claim on Mr S' policy. And it was entitled under the terms and conditions of the policy to take over and conduct the settlement of the claim. It also doesn't need Mr S' approval of any decision to admit liability, settle a claim or make a payment to a third party.

Overall I think Advantage investigated matters reasonably. And it concluded it didn't think it could successfully defend the claim and show the driver of Mr S' car wasn't to blame. It decided to settle the other party's claim on a without prejudice basis.

Mr S may disagree with Advantage's interpretation of the evidence and decision to deal with and settle the third party's claim but I don't think it's failed to comply with the policy terms or exercised its discretion unfairly or unreasonably when deciding to deal with and settle the claim as it's done.

Advantage allowed Mr S' no claims discount as a goodwill gesture. That's fair.

Advantage's obliged to accurately record any incident it's made aware of. I don't agree with the adjudicator that this should be recorded as notification only, as a claim was made. And in this case Advantage has paid out money it hasn't recovered. So, I think it's fair and reasonable for it to record this as a fault claim on Mr S' record.

But if Advantage subsequently establishes the identity of the actual driver of Mr S' car and is able to recover all its outlay it will no doubt change this to recording a non fault accident. Mr S can then ask his current insurers to reassess his premiums with a view to possibly giving him a refund of some premium he's paid.

I recognise Mr S' frustration and strength of feeling. But taking everything into account I don't think Advantage has done anything wrong. And I don't think I can fairly or reasonably require it to do anything more than its already done, including paying Mr S any compensation as the adjudicator suggested, or to amend its recording of the claim as Mr S would like.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 October 2017.

Stephen Cooper
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