

complaint

Mr P has complained about Advantage Insurance Company Limited's service after he claimed on his motor insurance policy.

Reference to Advantage includes its agents.

background

Mr P was in an accident which he said was the other driver's fault. Advantage arranged repairs to his car. The other driver denied having been in an accident. Advantage said it couldn't recover its outlay, which is what it had paid to settle Mr P's claim, so it recorded the claim as a "fault" incident and didn't recover Mr P's excess.

Mr P brought his complaint about that and about Advantage's communication with him to us. Advantage acknowledged that its communication hadn't been good. And it offered Mr P £100 compensation for the impact of that. But it thought it had settled Mr P's claim reasonably.

Our adjudicator didn't think Advantage had dealt with Mr P fairly. So he said it should:

- Reimburse Mr P for his excess.
- Mark the case as non-fault.
- Reinstate Mr P's no claims discount (NCD).
- Pay him a further £250 compensation.

Advantage didn't agree so the complaint's been passed to me to decide.

my findings

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 going to uphold it.

It's important that I make it clear that it's not my role to decide who's at fault for an accident, as ultimately that's a matter for the courts. And, like all motor policies, Mr P's policy allows Advantage to settle claims as it sees fit. That means it doesn't require Mr P's consent to decide how to settle a claim and it may make a decision that Mr P doesn't agree with. But I'll look to see if it's done so reasonably.

In this case Mr P said at the time of the accident he was stationary and waiting to pull out of a side-street. He's explained that the street is usually one way but the exit at the other end was blocked by road works so he had to exit the road from the end which would usually be entrance only. He said that while he was waiting to turn another car drove in and as it went past him it hit the rear of his car. He said the driver refused to talk to him but he took her registration details and could provide a description of her.

Advantage asked the other driver's insurer to accept liability. The other insurer said that its policyholder denied being in the accident. Some months later Advantage passed the matter to its solicitors. Eventually, around 14 months after the accident, the solicitors dropped the case because the other driver had denied liability and because the solicitors felt that the damage to Mr P's car wasn't consistent with how he said the accident happened.

Where a third party driver denies having had any involvement in an incident at all the first action I would expect an insurer like Advantage to take is to have an independent engineer assess both cars. That's to see if there's damage to the cars and if that's consistent with the coming together that one of the drivers has alleged. So that's what I would have expected Advantage to do in this case. But I haven't seen any evidence that it did so. Instead, over eight months later, Advantage referred the matter to its solicitors. It appears that the solicitors then did very little to investigate the circumstances of the claim and after a further six months dropped the case because the other driver had denied involvement.

I don't think that was a fair outcome for Mr P. By that time some 14 months had elapsed since the incident and Mr P had had his car repaired by then. So there was no longer any real scope to compare the accident damage or even to establish if the other car had been damaged, as it could well have also been repaired by then.

I accept it's possible that if Advantage had sent out an engineer to assess the other driver's car it's possible that could have shown that the other car hadn't been in an accident. But because it didn't do that Mr P won't ever know whether that was the case or not. So I think Advantage's failure to inspect the other driver's car has significantly prejudiced his position to the point that he can't now prove that the other driver's car and his were in a collision. And without that proof he has no real prospect of having the claim decided in his favour. I don't think that's fair.

Advantage's solicitor said that she didn't think the damage to Mr P's car was consistent with the accident as he described it as she said this would have resulted in a front end collision. But she hasn't provided any persuasive rationale for that. From a lay perspective I can't see why any collision would have had to be front end. And it seems plausible that one car driving past another could clip the rear quarter of the car, which is what Mr P described.

Also Advantage has said that as Mr P was coming out the wrong way from a side-street and there was no independent witnesses or CCTV then it would have provide difficult to say that Mr P wasn't at least partly at fault. But Mr P's evidence is that he was stationary when the other car hit him. And if an engineer's inspection had proved that the other driver's car had hit Mr P, given the driver denied any involvement, that would have called into question the truthfulness of her evidence if the matter had had to go to court. But as there's now no real prospect of this case ever going to court, we can't say what weight a court would give to each driver's evidence. And it's possible that, when the other driver's insurer learned that she had in fact been in an accident which she'd previously denied, it would have accepted liability on her behalf. So I don't think it's fair, given that Advantage's actions have denied Mr P any realistic opportunity of proving his claim that Advantage should now argue that he might have been found to be partly at fault.

Advantage also objected to our adjudicator's recommendation that it should reimburse Mr P's excess as it said that this is always payable on any claim. I agree that's the case. And the excess is what's known as an "uninsured loss", that is it's not covered by the policy. But when a claim is decided as non-fault it's usual for the non-fault driver to be able to claim their excess back from the other side. But because of Advantage's mistakes there's no prospect of Mr P being able to do that now. So in the specific circumstances of this case I think it's fair that Advantage reimburses Mr P with a sum equivalent to his excess.

I also think it's fair that Advantage should change how the incident is recorded on internal and external databases from fault to non-fault. It should also reinstate Mr P's NCD. And to address his distress and inconvenience arising from its handling of this matter pay him further compensation of £250.

my final decision

For the reasons set out above I don't uphold this complaint. I require Advantage Insurance Company Limited to:

- reimburse Mr P a sum equivalent to his excess;
- change how the claim is recorded on internal and external databases from fault to non-fault/NCD allowed;
- reinstate Mr P's NCD;
- pay him a further £250 compensation. It should pay the compensation within 28 days of us telling it that Mr P has accepted my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a rate of 8% a year simple¹.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 26 April 2020.

Joe Scott
ombudsman

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