

## **complaint**

Mr M has complained that Advantage Insurance Company Ltd wrongly settled another driver's claim against his motor insurance policy. Mr M was insured with Hastings Direct, but the insurance company behind them is Advantage. So that's why I've referred to Advantage in this decision.

## **background**

Mr M was involved in an accident when he says a van ran into the back of him. The van driver said Mr M reversed into his van. Some of Mr M's neighbours witnessed the accident, but they didn't initially provide witness statements.

After considering both versions of events and looking at photographs of the damage to the van Advantage agreed to settle the other driver's claim. Mr M later submitted his neighbours' witness statements, which supported his version of events. But Advantage still felt they were right to settle the other driver's claim. So Mr M brought his complaint to us.

The adjudicator didn't think that Advantage had done anything wrong. Mr M didn't agree so the matter has been passed to me for a decision.

## **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've decided not to uphold it.

I appreciate Mr M is sure he wasn't at fault for the accident. But, it's not my role to decide who's at fault for an accident. Instead, I look at whether Advantage acted fairly and reasonably when it decided how to settle the van driver's claim.

Like almost all motor insurance policies, Mr M's policy gives Advantage the right to take over the defence or settlement of any claim as it feels appropriate. And it can make its own decision about whether it's reasonable to contest a claim or better to settle it. This might mean that Advantage makes a decision that Mr M doesn't agree with, but that doesn't necessarily mean Advantage has done anything wrong. In other words if Mr M wants to make a claim under his policy, he has to accept Advantage might settle it without his agreement. But we do look to ensure Advantage came to its decision reasonably and fairly.

At the time Advantage decided to settle the claim Mr M had been unable to provide witness statements. But Advantage did consider the available evidence. Advantage noted that both drivers blamed each other. It looked at photos of the accident damage to the van. Advantage thought those photos indicated that the accident happened how the van driver described it.

When considering how best to deal with a claim most insurers will do so in a way that minimises its costs. So when deciding to settle the claim it's reasonable for Advantage to make a commercial judgment about whether it was better to settle the van driver's claim rather than defend it. If it had chosen to defend it there was a risk of having to pay significant extra costs in legal expenses. At that time Advantage felt the evidence supported the van driver's claim. So I think its decision to settle the claim without going to court was reasonable as it meant it most probably limited its costs. And this is a decision that Mr M's policy allows it to make. Although, as I've explained it wasn't really about the costs, as – at the time it

settled - Advantage didn't think they had much chance of defending the other driver's claim successfully.

And - in any event - an insurer shouldn't settle a claim to minimise costs, which it knows they can probably defend and let it have a negative impact on its policyholder. So if it does decide to settle a claim it knows it can probably defend successfully, it should make sure the claim is marked as a non-fault claim. So it doesn't affect its policyholder's no claim discount or premium's moving forward in the way a fault claim would.

After Advantage settled the claim Mr M sent it his neighbour's witness statements, which support his version of events. But, by then, Advantage had already settled the claim so it wouldn't have been right for it to try and change its decision then. Instead, Advantage considered how it had recorded the claim against Mr M. And, given the new evidence supported Mr M's account, it changed the record of the accident against Mr M from 'fault' to 'non-fault'. In other words, it removed any sense that Mr M was to blame for the accident. That means that the accident won't affect Mr M's no claims discount. And it will only affect his premium in the same way any other non-fault claim might.

But it's not clear that Mr M was aware of that. In response to the adjudicator's view Mr M said that Advantage decision to settle the claim would affect his no-claim history. But given Advantage has recorded the claim as non-fault that's not correct.

Mr M also suggested to Advantage that it should use a loss adjuster to investigate the claim. But, at the point that he made that suggestion, Advantage had already settled the claim and marked it as non-fault for Mr M. So it had little to gain by using a loss adjuster, as that would've only increased costs with no prospects of it changing the outcome.

So, I think - for the most part - Advantage has dealt with things reasonably. It initially settled the claim in line with Mr M's policy terms. Then, when it did receive the witness statements, it marked the accident as non-fault, so it would have a minimum impact on his insurance record. But it should have told Mr M this and it's unfortunate it didn't. So I think overall it's acted reasonably and this means it's not appropriate for me to uphold Mr M's complaint.

### **my final decision**

For the reasons discussed above 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 Mr M to accept or reject my decision before 21 March 2016.

Joe Scott  
**ombudsman**