

## **The complaint**

Mr W complains that Advantage Insurance Company Limited (Advantage) provided poor service and paid out too much to a third party he was involved in a car accident with.

Mr W is being represented in this complaint. For ease, references to Mr W include the actions and comments etc. of his representative.

## **What happened**

In December 2018, Mr W was involved in a car accident. He says he clipped the back of a parked car, then veered to the other side of the road and hit a wall/bus stop. He was arrested at the scene, charged, and ultimately convicted for drink-driving.

Mr W reported the accident to Advantage, his car insurer. He says it told him it would be in touch if it received any claims. In January 2019, it wrote to him explaining it couldn't cover his damages/indemnify him due to a policy exclusion for drink-driving. In July 2019, it notified him that the third party whose car he'd hit had claimed for £6,505. It explained it had withdrawn indemnity – but had a legal duty to deal with the claim. So, it would be seeking to recover its costs from him. Mr W disputed the level of the claim. Advantage asked the third party's insurer (TPI) for more information about the costs. Mr W says it told him it would keep him updated and pass on what it received. But around November 2019, it told him it had settled for £6,505 – which he'd need to repay.

Mr W complained to Advantage about the lack of updates and the amount it had settled for. He thought it should have requested the police report. Advantage sent him £50 compensation for not keeping him updated. But it said it had a duty to settle the claim – and it didn't have enough evidence to dispute the amount. It had relied on a valuation report provided by the TPI. Mr W referred the matter to our service. Our investigator thought it was fair and reasonable for Advantage to agree to the proposed settlement – and to try to recover this from Mr W. He didn't think the police report had a bearing on this. Overall, he decided £50 was fair compensation for the communication issues.

Unhappy with this view, Mr W has requested a final decision. He says he wasn't aware that Advantage would seek to recover costs from him until July 2019. And that it told him it would keep him updated about the TPI's claim evidence – then failed to do so. He's told us this caused him a lot of stress on top of the financial implications.

## **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 agree with the conclusions our investigator reached. I'll explain why.

I know this situation has been very difficult for Mr W, and I'm sorry to hear about the impact it's had. My role here is to consider whether Advantage acted fairly and reasonably in the circumstances.

As a starting point, I've looked at what the terms and conditions of Mr W's policy say about what he's covered for. I'll highlight a few sections that are relevant to this case. Term four of the 'General Exceptions' explains:

*"you're not covered if an accident happens while you or anyone entitled to drive under your current Certificate of Motor insurance... is found to be over the prescribed limit for alcohol in the country where the incident happens"*

Term one of the 'General Conditions' explains:

*"Your Insurer has the right to... Take over and conduct the defence or settlement of any claim"*

And the policy goes on to explain:

*"In all the circumstances listed in general exceptions and general conditions, no cover will be provided to you under the Policy. Instead, your Insurer's liability will be restricted to meeting the obligations as required by Road Traffic Act or alternative laws that apply in the country in which the loss occurs. In such circumstances. Insurers may seek to recover from you, or the driver, any sums paid by the Insurer to discharge that person's liability, whether in settlement or under a court judgement."*

Mr W admits he was over the limit for alcohol when the accident occurred. The policy terms make it clear that he's therefore not covered for the accident. The Road Traffic Act still requires Advantage to deal with third-party claims. But, as the policy terms make clear, I'm satisfied it's entitled to seek recovery of its costs from Mr W.

I know Mr W feels strongly about the third party's costs. But what I'm considering is whether Advantage acted reasonably in the circumstances. It sought evidence from the TPI before agreeing to pay. I'm satisfied it was reasonable to rely on the valuation report it received, which was from the time of the accident and included photographs of the damage. It doesn't appear there was anything further available likely to challenge/outweigh this. As Mr W has told us, he doesn't have photographs from the scene. No independent witnesses or CCTV footage were identified. And, as our investigator noted, it's unlikely the police report commented on the extent of damage to the third party's car (to an extent that would challenge the engineer's valuation report). So, I'm satisfied it was reasonable for Advantage to settle for the amount it did – as I'm not persuaded that, given the information available, it (or Mr W) could have successfully challenged this.

I have also considered the communication issues Mr W has raised. He says he wasn't aware costs might be sought until the July 2019 letter. But the third party didn't claim immediately. And the January 2019 letter explained that Advantage wouldn't be offering indemnity. So overall, I'm satisfied Advantage communicated reasonably when first notifying Mr W about the costs it was seeking to recover.

I appreciate the gap between when Mr W challenged the level of costs and Advantage's next contact may have affected his expectations. But ultimately, he ought reasonably to have been aware that the matter wasn't fully settled. I also can't hold Advantage responsible for the time it took to get substantiating evidence from the TPI; I can only hold it responsible for its own actions (or those of agents acting on its behalf).

That said, Advantage admits it should have done more to keep Mr W updated. It's given him £50 for this. I do appreciate how upsetting this incident has been for Mr W. I think a lot of this impact was unavoidable. Whilst Advantage could have been more proactive about providing the TPI's evidence, it would always have been disappointing to find out this had been provided. And, as addressed above, I'm satisfied it was ultimately reasonable to settle as it did. So, in all the circumstances, I'm satisfied that £50 is a fair reflection of the impact Advantage's errors had on Mr W.

Whilst I appreciate this will be disappointing to Mr W, I'm not awarding more compensation or directing Advantage to take any other action to resolve the complaint.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 21 August 2020.

Rachel Loughlin  
**Ombudsman**