DRN-1789654

The complaint

Mr M complains that Advantage Insurance Company Limited is responsible for mishandling a claim on his motor insurance policy.

What happened

The Financial Ombudsman Service deals with a consumer complaint against one insurance company or other regulated financial firm at a time.

Where a complaint is about a claim under an insurance policy, we treat it as a complaint against the insurance company that was responsible for dealing with that claim. In our final decision we name that insurance company, but we don't identify any other party.

We don't make findings against any other financial firm against which the consumer may complain separately.

In early August 2016, Mr M had a motor insurance policy branded with the name of an insurance intermediary. Advantage was the insurer responsible for dealing with claims.

The policy terms included a definition of "We/Us" that made it clear that the intermediary was acting on behalf of Advantage. Where I refer to Advantage, I include the intermediary, claims-handlers and others insofar as I hold Advantage responsible for their actions.

On 5 August 2016, Mr M notified Advantage that - while overtaking - he had clipped a cyclist. Mr M didn't wish to claim for any damage to his vehicle.

In January 2017, the cyclist made a claim for personal injury. By 23 November 2017, Advantage had settled that claim and told Claims and Underwriting Exchange ("CUE") that Mr M had been at fault.

In February 2019 Mr M passed his motorcycle test and ordered a new bike. On about 27 February 2019, Mr M, through a bike insurance intermediary, took out a bike policy with a new insurer for a year from 2 March 2019. He didn't mention the August 2016 incident.

The bike insurance intermediary found out about the August 2016 incident. On about 2 March 2019, the intermediary asked Mr M for an additional premium of £567.62.

Mr M complained to Advantage that it hadn't informed him about the cyclist's claim or its settlement.

By a final response dated 12 December 2019, Advantage said it hadn't been obliged to tell Mr M when the cyclist made the claim – but it should've told him when it settled the claim. Advantage paid Mr M £50.00 for trouble and upset.

Unhappy with that, Mr M brought his complaint to us on 20 December 2019. He said Advantage should increase its payment.

Our investigator recommended that the complaint should be upheld in part. He thought that - as Mr M never heard anything from Advantage - Mr M may have felt he didn't have to disclose the claim. So he would've been stressed and frustrated by what had happened with his new insurer. The investigator recommended that Advantage should pay Mr M a further £50.00.

Advantage disagreed with the investigator's opinion. It asked for an ombudsman to review the complaint. It says, in summary, that:

- £50.00 is fair and reasonable compensation for the trouble and upset caused by the claim closure letter not being sent.

- Advantage doesn't know whether the new insurer asked Mr M a clear question about his driving history. If it did, he should've disclosed the August 2016 incident. The new insurer would've been able to correctly calculate his premium.

- Advantage didn't cause the stress that Mr M experienced as a result of the new insurer amending his policy to the correct details.

- Mr M was still within his cooling- off period and had the option to cancel the new policy and look elsewhere if it was no longer competitive.

Mr M disagreed with the investigator's opinion. He says, in summary, that:

- The principle of utmost good faith in contracts of insurance works in both directions.

- Advantage's position that it had no legal obligation to inform him of the claim is contrary to that principle.

- All the investigator has done is to confirm Advantage's failure and increase the level of compensation.

- To reflect Advantage's culpability, compensation should be increased to £150.00.

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.

The Financial Ombudsman Service doesn't punish financial firms. Where we find that a firm should've acted differently, we don't assess compensation at a level to reflect its culpability or to deter future wrongdoing. Rather we look at the effect on the complainant and we direct compensation for financial loss or for distress ad inconvenience wrongly caused by the firm.

The Advantage policy terms included the following note:

> *"A non-recoverable claim is a claim made against your Policy, where your Insurer has made a payment they can't recover in full, from a Third Party.*
> *Or it's a claim that's outstanding because it's not clear who's responsible. Sometimes it's called a 'fault claim'."*

That's a clear explanation of the usual practice, in my view. So a claim may be a fault claim without any acceptance of fault by the policyholder.

Most motor insurance policies contain a term allowing the insurer to decide how to deal with a claim involving a third party. Advantage's policy included the following:

> "***Your Insurer has the right to:***
> *Take over and conduct the defence or settlement of any claim*
> *Take legal action over any claim.*
> *These actions may be taken in your name*…"

So – on the issue of how to deal with a claim from a third party - Advantage's view would prevail over Mr M's.

In August 2016, Mr M didn't make a claim for damage to his vehicle. But I consider that he was making a claim for Advantage to indemnify him against any claim from the cyclist. And in any event Advantage was under a legal duty to deal on Mr M's behalf with any such claim.

The insurer wrote a letter dated 12 August 2016 o Mr M. It included the following:

> "*Please note that if you are deemed responsible for the accident we may make contact with the third party in order to deal with their claim directly*."

The context was that Mr M had reported clipping the cyclist. So I'm satisfied that Advantage had done enough to tell Mr M that it would deal with any claim from the cyclist. The policy terms allowed Advantage to settle the cyclist's claim.

Neither Mr M nor Advantage has told us when the policy came to an end. From what the bike insurance intermediary and Mr M said later, he was involved in another incident in February 2018.

It was a year later in February 2019 that Mr M took out the bike policy with the new insurer.

The old principle of "utmost good faith" in insurance contracts has been substantially modified in favour of consumers by the Consumer Insurance (Disclosure and Representations) Act 2012, and the approach applied by the Financial Ombudsman Service. I would expect the new insurer to ask a clear question and I would expect Mr M to take care to answer as correctly as possible.

From the bike policy schedule, I see that the intermediary had asked Mr M the following:

> "*Have you or any person who may drive been involved in any accident, claim or loss (including loss by fire, theft or malicious acts), irrespective of blame, during the past three years?*"

From the policy schedule, I see that Mr M had answered "*Yes*" and was met with a follow-up question as follows:

> "*If 'Yes' please provide full details below*."

I see that Mr M gave no details of the August 2016 incident. He gave details of the February 2018 incident but said it wasn't an "*at fault*" claim. I make no finding as to whether Mr M took reasonable care to give a correct answer.

However, I see that the bike insurance intermediary wrote a letter including the following:

> "*The reason why there was an additional premium was due to a fault claim from 5th of August 2016 being non disclosed to ourselves, also the claim that took place on*

the 23rd February 2018 had been put as non fault and we have confirmation this was settled at fault"

That's two reasons why there was an additional premium.

As regards the first reason, I consider that August 2016 incident and settlement of the cyclist's claim were always likely to increase the cost of Mr M's insurance. The policy terms entitled Advantage to settle that claim.

I don't condone its failure to tell Mr M when it closed the August 2016 claim in November 2017. But neither that failure nor Mr M's omission to mention the August 2016 incident caused the new insurer to increase the premium. One reason the new insurer charged the increased premium was because Advantage had – reasonably in my view – settled the cyclist's claim.

As regards the second reason – about the February 2018 claim – there's no evidence that this was anything to do with Advantage.

Therefore I'm not persuaded that – by failing to send a closure letter in November 2017– Advantage caused any identifiable increase in Mr M's bike premium in March 2019.

In any event - if he thought he could get a lower premium elsewhere - Mr M could've cancelled the policy with the new insurer.

If Advantage had told Mr M when it settled the third party's claim in November 2017, then he would've been better informed and more prepared for higher insurance premiums. So I do hold Advantage responsible for some of the distress and inconvenience Mr M suffered as a result of finding out from his new insurer in March 2019.

Putting things right

I don't consider that £50.00 was enough to compensate Mr M for this. Overall I find it fair and reasonable to direct Advantage to pay a further £50.00 for distress and inconvenience.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Advantage Insurance Company Limited to pay Mr M – in addition to the £50.00 it has already paid – a further £50.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 December 2020.

Christopher Gilbert
Ombudsman