

The complaint

Miss J complains about the way Advantage Insurance Company Limited handled a claim against her motor insurance policy.

Miss J is assisted in this matter by Ms J. References are to Miss J throughout this decision as the representations have been made on her behalf.

What happened

The details of this complaint are well known to both parties, so I won't repeat them here in any detail.

Miss J had a motor insurance policy with Advantage which started in February 2022. A claim was made on the policy for an accident in June 2022.

Miss J explained to our service she pulled over to the side of a high street into a car parking space by the kerb. A passenger in the back of the car opened the door an inch to see if it was safe to get out and the door was hit by a passing car. Miss J says the passing car didn't leave sufficient space to pass the car. After this was reported to Advantage, she says there was limited contact until over a year later in September 2023 when there was a flurry of activity – emails and missed calls on one day - asking for her urgent response to questions and whether Miss J would attend court. Miss J emailed Advantage to ask it to contact Ms J urgently. Further emails were sent to Miss J the next day, whilst she was at work, with a deadline to respond of 3pm. Ultimately, the claim was settled by Advantage in full without prior discussion with Miss J (or her representative). Miss J says she wasn't at fault, and, over this time, she was distraught at the rushed emails, wasn't informed about her being held at fault and why she was being asked to attend court nor the threat of a CCJ being made.

At the time, matters were considered by Advantage, and it didn't uphold Miss J's complaint. It explained some of the things it considered when deciding how to settle the claim. And said, although the best it could've hoped for at court was a split liability outcome, this wouldn't change the impact on Miss J in terms of her excess (as this hadn't been paid) or how the claim was recorded. It set out the time frame of the claim and information it received from the third party with a court claim form the day before it contacted Miss J, explaining it had to deal with this urgently as a result. However, it agreed the service provided didn't meet the standard Miss J was entitled to expect and offered £100 compensation for this.

Miss J brought her complaint to this service for an independent review.

An Investigator at this service looked into matters. They considered Advantage made a reasonable decision on the claim outcome. However, they thought the compensatory offer should be increased to £250 in total. This is because the poor communication meant Miss J had no updates and wasn't given a fair timescale to respond. This was a worry for her, and not anticipated as she hadn't been kept up to date throughout the claim. They also thought the CCJ was likely threatened due to Advantage's poor communication with the third-party insurer.

Advantage didn't accept the Investigators view to increase the compensation. It said, whilst acknowledging this would've caused distress, the rushed communication was to mitigate the financial impact to Miss J. The Investigator explained his recommendation in further detail.

Miss J remains unhappy with being held at fault for the accident. She raised points about the distance a vehicle should allow when passing a parked car. And questions whether Advantage thought it had a chance in court - which is why there was pressure to confirm attendance in a short space of time – and only changed this view because it had to settle the claim as a result of its poor claims handling rather than the prospects of the claim.

The Investigator communicated about the points raised and explained why this didn't change his view. Ultimately, he thought the receipt of the CCJ documents sparked action with Advantage and it attempted to contact Miss J urgently, at short notice, when it didn't need to. This is because Advantage's litigation team said it already had the information on file to be able to say it wouldn't have a good chance in court, so it didn't think contacting Miss J again was required as it should accept full liability.

The matter has now been passed to me for a decision.

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'm satisfied the Investigator reached a fair outcome here and I consider they set out the reasons for this clearly and thoroughly. So, I don't uphold Miss J's complaint in this matter. I will just make the following comments in addition to those of the Investigator.

Firstly, I acknowledge Miss J has strong views about what happened in the accident. But it's not the role of this Service to determine who is responsible for an accident – decisions on this are best dealt with by a court of law.

What we decide in a matter like this is whether the insurer has acted in accordance with the terms and conditions of the policy which set out the agreement between the parties taking into account all available evidence. And I'm satisfied Advantage did. I say this because the terms allow Advantage to investigate, defend and settle claims as it sees fit. It therefore doesn't need Miss J's approval of any decision to admit liability, settle a claim or make a payment to a third party. That can mean it makes a decision the policyholder disagrees with, as has happened here.

I have, however, gone on to consider whether Advantage made a reasonable decision in settling the claim as it did, based on the evidence it had and circumstances of the case. Advantage explained it accepted liability for the third party's claim on Miss J's policy considering the following:

- Both parties' versions of events and the damage to the vehicles.
- There was no independent evidence, such as witnesses or CCTV or dashcam footage.
- Its expertise and experience in insurance claims which included how courts view such matters and the likelihood of success in pursuing a legal case. In particular, its litigation team provided the expert opinion if there was a passenger in the back of the car and the door had been opened, even slightly, it should accept liability as it wouldn't have a good chance of success in court.

Whilst Miss J doesn't agree with the decision it has made, I'm satisfied Advantage considered all available evidence and, ultimately, accepted liability to limit the prospect of costs increasing if the third party took the matter further, particularly bearing in mind proceedings had already been issued. Taking everything into account, I'm not persuaded Advantage was acting unfairly or unreasonably when it did this.

I understand Miss J is unhappy decisions were made which she feels were incorrect and contrary to the evidence. But, as explained above, it's for Advantage to decide how to settle the claim, acting fairly and reasonably. And, having taken everything into account, I don't agree there's sufficient evidence for me to say it's more likely Advantage failed to do this.

Turning now to the compensation payment of £250 recommended by the Investigator. I think it's important to factor in the slow progress of the claim, delays and poor communications experienced throughout this matter, with an intense period of activity more than a year after the matter had been reported to Advantage. In that short period of time in September 2023, numerous calls were made, and emails sent discussing court proceedings and impressing a sense of urgency in Miss J's response. Actually, for the reasons the Investigator has explained, this was unnecessary as the claim could've been resolved a significant period of time before this by Advantage reviewing the evidence it had available at the outset and accepting liability. I say this particularly noting the obligations placed on Advantage under ICOBS 8.1. Therefore, I consider the recommended compensation of £250 to be a fair and reasonable way for it to put things right in all the circumstances.

I recognise Miss J will be disappointed with this outcome in relation to the liability decision reached by Advantage. But my decision ends what we – in trying to resolve her dispute with Advantage – can do for her.

Putting things right

Advantage Insurance Company Limited should pay Miss J compensation of £250 in total (including the £100 it already offered her).

My final decision

My final decision is I uphold Miss J's complaint in this matter. To put things right, Advantage Insurance Company Limited should take the steps outlined above. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 10 April 2024.

Rebecca Ellis
Ombudsman