

The complaint

Mr R complains Advantage Insurance Company Limited (Advantage) has unfairly cancelled his car insurance policy and is unfairly requiring him to pay its costs in settling a claim brought by a third party.

What happened

Mr R was involved in a road traffic collision one evening when driving home from work. He says he drove into the back of another car in slow-moving traffic.

When Mr R contacted Advantage to report the collision, he says Advantage told him it would be cancelling his policy. That was because he'd said he worked as a delivery driver for an online retailer and Advantage said Mr R's policy didn't cover his car for this use. Mr R says when he started his delivery driver job, he upgraded his policy to include business use, thinking this would cover him.

Advantage subsequently wrote to Mr R cancelling his policy. It also told Mr R that, if the third party involved in the collision made a claim, it would accept liability but would keep him updated on any changes.

Nine months later, Advantage wrote to Mr R saying it had paid the third party £5,600 following a claim and Mr R now needed to reimburse it that amount.

Mr R complained to Advantage saying:

- He wasn't delivering parcels at the time of the collision, so Advantage shouldn't have cancelled his policy and shouldn't be trying to get its costs back from him.
- Advantage didn't properly investigate the costs the third party claimed for because it knew, ultimately, it wouldn't be paying them.
- Advantage didn't keep him updated on developments.

Advantage said its decision to cancel Mr R's policy was correct and it had investigated and negotiated the costs claimed by the third party. But Advantage accepted it could've done more to update Mr R on the claim. It paid Mr R £30 in compensation for this.

Unhappy with this outcome, Mr R brought his complaint to us. Through his representatives, he's raised a number of issues. He says:

- The terms and conditions of his policy don't allow Advantage to claim back its costs from him. In the alternative, if they do, they're unfair contract terms.
- Advantage isn't entitled to claim back its costs as an "RTA insurer" under the Road Traffic Act 1998.
- Advantage has failed to keep in touch and update him on the third party's claim.

- Advantage has over-settled the third party's claim.
- Advantage has been slow to reply to requests for information from his representatives after he made his complaint.

Mr R says Advantage's actions have caused him a lot of stress, especially when it told him "out of the blue" after nine months he'd need to pay £5,600.

The investigator who looked at Mr R's complaint didn't uphold it. Among other things, he said he was satisfied Advantage was entitled under the terms and conditions of Mr R's policy to settle the claim as it did. And he thought the compensation Advantage had paid Mr R was fair and reasonable.

Mr R disagreed. He said it wasn't fair and reasonable for Advantage to rely on a clause that entitled it to settle the claim when it had cancelled the policy. Mr R questioned whether the clause survived the policy cancellation and, if it did, how it was fair for Advantage to say what he should pay. Mr R remained unhappy about the time it took Advantage to respond to requests from his representatives for information.

In my provisional decision of 15 February 2024, I explained why I intended to uphold one part of Mr R's complaint but not the other parts.

Both Mr R (through his representatives) and Advantage have responded to my provisional decision. And, as I'd requested, Advantage gave us a breakdown of the claim costs it paid the third party, which our investigator then passed on to Mr R's representatives.

So Mr R's complaint has now come to me for a final 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, and for the reasons I gave in my provisional decision, I've decided to uphold one part of Mr R's complaint, in relation to Advantage failing to keep him updated on the claim, but not the other parts of his complaint. In my provisional decision, I set out my reasons as follow:

"The policy cancellation and settlement of claim issue

My starting point in looking at Mr R's complaint is his car insurance policy. It has a condition saying Mr R isn't covered for any injury, loss, damage or liability that takes place while his car is being used "for any type of delivery, renting out, peer to peer hire schemes ...or use for hire and reward and including (but not limited to) use as a taxi or for couriering."

Mr R's certificate of insurance also sets out limits on the use of his car, saying he isn't covered for "hire or reward".

Mr R says he wasn't working as a delivery driver at the time of his collision and so wasn't driving in breach of both the condition and the limitation I've just referred to. I know Mr R upgraded his policy to include business use, thinking this would cover his delivery driver work. But, from his certificate of insurance, the upgrade only covered Mr R for travel to and from one permanent place of business or for use in his private business. Delivery driving was clearly neither of these things. So, while Mr R meant to cover his delivery driving by

upgrading his policy, that isn't what the upgrade achieved.

It follows that I think Advantage has acted fairly and reasonably and in line with Mr R's policy terms and conditions in cancelling his policy because he was driving outside the scope of his cover. That Mr R was driving home, having finished delivering parcels for the day, when the collision happened doesn't change my finding that Mr R was driving outside the permitted use of his car insurance policy.

Mr R says the terms and conditions of his policy don't entitle Advantage to claim back its costs. I disagree. The policy has a general condition saying Advantage has the right to take over and conduct the defence or settlement of any claim under Mr R's policy for its own benefit, which is what it has done in Mr R's case.

Mr R's policy also has a statement that says:

"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 the Road Traffic Act In such circumstances, Insurers may seek to recover from you ... any sums paid by the Insurer to discharge that ... liability, whether in settlement or under a court judgement (my underlining)."

Mr R questions whether these contractual terms and conditions survive Advantage's cancellation of the policy. I think they do. The policy wasn't cancelled until after the collision, so they're still relevant and applicable to it – and to any directly linked actions for the period the cover was in place. Both the general condition and the policy statement I've just referred to are standard in car insurance policies and I don't think Advantage has applied them unfairly or unreasonably in Mr R's case.

Mr R also questions whether Advantage is entitled under The Road Traffic Act 1998 to claim back its costs. Under the Act, an insurer can't avoid liability to a third party because there's been a breach of condition by its insured. But to be an "RTA insurer" under the Act, there's a requirement for there to be an unsatisfied judgment. In Mr R's case, there is no such judgment. So I agree with Mr R that Advantage isn't strictly acting as an RTA insurer here.

But there are two more things I'd say about this. The first is that, when liability for a claim isn't in dispute (as in Mr R's case), insurance industry practice has evolved such that the insurer can act in the spirit of the Act and as if it's an RTA insurer, so as to speed things up and save costs for everyone. The insurer doesn't have to have an indemnity in place to recover. The second is that, in any event, as I've already said, Advantage is entitled contractually to recover its costs, under the policy terms and conditions, with or without a court judgment.

So, in the circumstances of Mr R's complaint, I think the approach Advantage has taken in seeking recovery of its costs from Mr R is fair and reasonable and in line with his policy terms and conditions.

The over-settlement of claim issue

Mr R says Advantage over-settled the claim knowing it wouldn't ultimately be paying the third party's costs. He says the car he collided with had minimal damage, that its market value was much less than the claim value and there was no evidence the third party was injured.

Advantage says there was a personal injury claim and it negotiated costs with the third party for this. It says it had images of the third party's car from Mr R and from the third party, which showed consistent damage. And it says it also had repair documents from the third party.

It's not our role to decide the amount an insurer should pay in relation to a third-party claim. But we can look at whether an insurer has acted fairly, reasonably and in line with the policy terms in doing so. Having looked at Advantage's claim notes, I've seen no evidence it settled this claim differently from any other. Given the circumstances in which the collision took place (with Mr R driving into the back of the third party's car in traffic), I think Advantage acted fairly and reasonably in accepting liability for the claim. And I can see from its claim notes Advantage negotiated the third party's personal injury costs and got repair documents from the third party – all of which I'd expect it to do as part of reaching a fair and reasonable settlement.

Having said that, I think it would be helpful – before I make my final decision on this complaint – for Advantage to give Mr R a breakdown of the costs it's paid out to the third party. And if Mr R then has any specific evidence to show the claim involved exaggerated or inflated costs, he can send it to me and I'll look at this issue again. If Advantage sends this breakdown to our investigator as soon as possible, he can then pass it on to Mr R.

The claim update issue

After nine months had passed without any updates from Advantage on the claim, Mr R then found out he'd have to reimburse the third party's costs of £5,600. Advantage had previously written to Mr R saying it would accept liability for any claim, but it had also said it would update him on any changes. In failing to update him, I think Advantage treated Mr R unfairly. As I've already said, Advantage has the contractual right to settle the claim under the terms and conditions of Mr R's policy. But it should've kept Mr R updated on the progress of the claim, given it was going to be his responsibility ultimately to pay it. This would've given Mr R the opportunity to highlight any concerns he had about the claim value. It would also have lessened the shock he felt on finding out how much he'd have to pay back.

Mr R was, as he says, told by Advantage "out of the blue" after nine months that he'd have to pay its costs – costs which, for him, are significant. It's clear he experienced considerable distress, upset and worry as a consequence of this. For the distress and inconvenience Advantage's failure to keep Mr R updated on the claim for nine months has caused him, I intend to direct it to pay him a further £470, in addition to the £30 it has already paid him.

The response time issue

Mr R has also complained about the time it took Advantage to respond to requests for information from his representatives. Looking at Advantage's claim notes, it seems this may have been because Mr R didn't give Advantage authority to deal with his representatives until a couple of months after they first wrote with their information requests. And it looks as if Advantage responded within a reasonable time when it got that authority. So, from what I've seen so far, I don't think Advantage did anything wrong here. But if Mr R has evidence he gave Advantage authority to deal with his representatives at an earlier stage, he should let me know and I'll look at this point again.

Finally, I should say that, while I may not have referred in my decision to all of the points Mr R and his representatives have made in connection with his complaint, I have carefully considered them but they haven't altered the conclusions I've reached on it so far."

As I've mentioned, both Mr R (through his representatives) and Advantage have responded to my provisional decision. Mr R's representatives say he has no further representations to make about my decision. They also make some wider observations about how Advantage dealt with Mr R's claim while his complaint was with us.

Advantage says it advised Mr R soon after the claim was logged by the third party that it would ask him to reimburse its costs once the claim was settled. But as I said in my provisional decision, nine months then passed before Advantage contacted Mr R to tell him he'd have to pay £5,600 to settle the claim. And, for the reasons I gave in my provisional decision, I don't think that was fair. So Advantage's comments on my provisional decision don't change my conclusions on this part of Mr R's complaint.

My final decision

For the reasons I gave in my provisional decision of 15 February 2024 (which now form part of this final decision), I uphold Mr R's complaint and direct Advantage Insurance Company Limited to pay him £470 in compensation for the distress and inconvenience it has caused him.

Advantage Insurance Company Limited must pay this compensation within 28 days of the date we tell it Mr R has accepted my final decision. If it doesn't, Advantage Insurance Company Limited must also pay Mr R simple interest on the compensation at the rate of 8% a year from the date of my final decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 4 April 2024.

Jane Gallacher
Ombudsman