

The complaint

Mr L complains Advantage Insurance Company Limited unfairly declined his motor insurance claim.

Advantage's been represented by an agent for the claim and complaint. For simplicity I've referred to the agent's actions as being Advantage's own. For the same reason I've referred to Mr L's representative's actions as being his own.

What happened

In December 2022 Mr L took out an Advantage telematics motor insurance policy. The policy terms required him to pair a device (tab) with his mobile phone. The tab provided data to Advantage on Mr L's driving behaviour. Advantage uses the data to calculate a driving score. Mr L was required to keep his cumulative score at a certain level or risk Advantage cancelling the cover.

On 12 August 2023 Mr L's car was damaged in a crash. No other vehicles were involved. He claimed against the Advantage policy. Advantage considered the car a total loss but declined the claim. It said Mr L hadn't complied with the terms of his policy. He hadn't been ensuring the driving data system was operating. Advantage said as a result there was no driving data available for the incident. It explained in those circumstances, where it can reasonably show the app or tab has been tampered with or misused, the policy terms allow it to not cover the cost of repairs.

Mr L complained. He considered it an unfair decision as he had ensured the device and tab were paired. In September 2023 Advantage responded. It didn't change its position on the claim. It said the policy terms required Mr L to provide driving data for every journey. It said prior to the claim it hadn't been receiving data despite sending Mr L chasers and reminders. Advantage said it was Mr L's responsibility to ensure the tab is paired for every journey. Advantage explained as the tab had been misused, the terms allow it to decline the claim.

Mr L wasn't satisfied, so referred his complaint to the Financial Ombudsman Service. He said after receiving a warning about a lack of driving data on 8 August 2023 he had made sure the tab was providing it. He said it's unfair that the claim hasn't been paid. To resolve his complaint he wants Advantage to pay it – plus compensation for distress and being left without a car.

Our Investigator felt Advantage hadn't treated Mr L fairly. She didn't think the policy terms or letters sent by Advantage, about the need to pair the device and mobile phone for every journey, were clear enough to allow it to fairly decline the claim. Neither did she accept a lack of driving data was material to the loss. So she recommended Advantage pay a total loss settlement for Mr L's car – with simple interest applied, £200 compensation and that it remove any record of policy cancellation. Mr L was pleased with the suggested outcome. As Advantage didn't accept it the complaint was passed to me to decide.

I issued a provisional decision. As its reasoning forms part of this final decision I've copied it in below. In it I explain why I didn't intend to interfere with Advantage' decision to decline

Mr L's claim. I also invited him and Advantage to provide any further comments or evidence they would like me to consider before issuing this final decision. Advantage accepted the outcome proposed in the provisional decision. Mr L didn't. He provided a range of comments and objections.

what I've provisionally 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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Mr L and Advantage have provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

It seems, from Mr L's submissions, that he believes Advantage aren't paying the claim as the policy had been avoided or cancelled. That isn't the case. There's no dispute that the policy was active at the time of the loss. Instead Advantage have referred to terms of the policy to decline the claim.

Mr L's policy covers his car against damage caused by an accident. There's no dispute it was damaged in an accident. So on the face of it his loss is covered by the terms. However, Advantage says Mr L breached the following terms of the policy.

'As part of the terms of this policy you're required to capture your driving data on every trip and keep your driving score above 30 failing which we have the right to cancel your policy.'

Advantage has also referred to a further term (the term) to decline the claim. The full term is:

'Claims

As part of our claims or fraud process, your Driving Data can also be used to help make sure any claim made by you or someone else is settled fairly.

You're covered for claims from your policy's start date, but to fully process a claim you'll need to have paired your App and Tab, even if it's after the incident has happened.

If there's no driving data available for an incident and we can reasonably show the tab or app have been deliberately tampered with or misused, we may not cover the cost of your repairs if you're found to be at fault for the accident'.

Having considered everything provided I intend to find Advantage's decision to rely on the term to decline the claim is fair and reasonable.

I've applied the term to the circumstances. First no driving data was available. But Advantage also needs to '...reasonably show the tab or app have been deliberately tampered with or misused...'. It hasn't stated explicitly what the tampering or misuse was. However, I take from its explanation that it considers Mr L misused the system by selecting when to use it. Considering the type of policy and requirement for him to capture driving data on every trip I'd consider that to be a potential example of 'misuse' of the system. I'll return to Advantage's misuse arguments later.

First, I've considered if Mr L was made aware of the need for the system to be providing data for every trip. It's a significant requirement with potential adverse consequences, so I'd expect Advantage to have made him aware.

I've seen the information Mr L was provided with taking out the cover in December 2022. Information in this, including the policy summary (IPID), explains he's required to pair the tab with the app when he's driving. As Advantage wasn't receiving data, he was sent a reminder and cancellation warning in late December 2022. Warning and cancellation threats were sent, for the same reason, on 25 July and 8 August 2023. Considering all this I'm satisfied Mr L was aware of the need to pair the app with the tab for every journey.

Advantage has said Mr L didn't just occasionally fail to pair the app and tab. It says instead there was a sustained period of 130 days without him pairing it. It's shown evidence that driving data was provided for a period up to the end of March 2023. But nothing was received from 1 April 2023 until 8 August 2023. That latter date coincided with receipt of the warning letter outlined above.

Advantage has shown on the 8 August 2023 Mr L recorded two journeys. It describes them as concerning, with Mr L using his phone and accelerating and braking hard on both. It's only provided the data for one trip. But it supports Advantage's description of the driving behaviour – showing low braking and acceleration scores - plus Mr L travelling around a roundabout at 64mph whilst 'tapping' his phone. It's also provided data from one of his last recorded trips before data stopped at the end of March 2023. It reports him making a phone call whilst driving at 20 mph.

After 8 August 2023 Advantage didn't receive any data for the following four days – including 12 August, the day of the loss. It believes Mr L was aware that the device wasn't recording his driving. It feels there's a pattern of Mr L, in response to receiving low scores for poor driving, choosing not to pair the tab and app.

I accept there may be a reasonable explanation for the lack of data provided to Advantage and the patterns referred to. I'll consider anything Mr L provides in response. But having considered Advantage's arguments, on balance, I currently intend to find it's done enough to reasonably show the tab or app was deliberately misused.

Finally the term requires Mr L needs to be found '...at fault for the accident...'. The incident has been described by Mr L as him losing control as a result of his hand slipping. There was no third-party involved. Based on this it's unlikely Advantage would be able to recover any claim costs from any other responsible party. So it would be reasonable for it to consider Mr L to have been at 'at fault'.

So Advantage has shown the term applies. And I'm satisfied it has done enough to show it's fair for it to rely on it to decline the claim. Advantage says if he had been sharing his driving data it would be able to see if his driving, for the incident, was reckless or safe. It suspects, based on the past performance, Mr L was using his phone when the accident happened. Advantage also raised concern about when the incident happened. It's referred to Mr L having reported three different timings for the incident – 1 am, 5am and 8am.

Considering the driving data discussed above, I can't say Advantage's concerns are unreasonable. The lack of data will have prejudiced its ability to understand the circumstances of the incident – and possibly its liability. The requirement for data is

to reduce the chances, in exchange for a lower premium, of poor driving. So for these reasons I don't intend to interfere with Advantage's decision not to settle Mr L's claim for damage to his car.

Finally – Mr L's policy was, in October 2023, cancelled by Advantage. I haven't considered, as part of this complaint, if that decision was fair and reasonable. That's because Mr L hasn't raised it as part of this complaint and so Advantage hasn't had an opportunity to give its position.

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.

Mr L's recent points include – Advantage should have told him sooner that it wasn't receiving data, that he was on a flyover, not a roundabout, when the data showed phone use at 64mph, that it could have been a passenger using his phone, that he should be judged on his overall driving scores not just the few days selected by Advantage, he wasn't made aware he needed to ensure the data system was working for every journey, he didn't disconnect the app and tab deliberately, he has no recollection of giving different times for the incident and Advantage's claims team had found he had given an honest account of the incident.

As this is an informal service, I'm not going to address every point Mr L made. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure him that I have considered everything submitted. Having done so, I still consider Advantage has done enough to show it can rely on the term to decline the claim.

I'm still satisfied Mr L was made aware of the need to pair the app and tab for every journey. I've considered his comments on the driving data, his behaviour and knowledge and the possibility of someone else using his phone. But I'm still satisfied Advantage has done enough to reasonably show, on balance, the tab or app was likely deliberately misused. The term also requires Mr L to have been 'at fault' for the incident. In his recent submission he didn't dispute that he was. So I'm still satisfied Advantage has shown the term applies.

I've taken into account Mr L's points about, and questioning of, the relevant driving data and Advantage's claims about, and its failure to evidence, him giving different times for the incident. Even if I accepted some of these points, I'd still be satisfied the lack of data, for the incident, will have prejudiced Advantage's ability to understand the circumstances of the incident – and possibly its liability. So I'm not going to interfere with its decision not to settle his claim for damage to his car.

My final decision

For the reasons given above, I don't require Advantage Insurance Company Limited to settle Mr L's claim, pay any compensation or do anything differently.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 24 October 2024.

Daniel Martin
Ombudsman