

The complaint

Mr M (“the policyholder”) and another Mr M (“the named driver”) complain that Advantage Insurance Company Limited mishandled a claim on a motor insurance policy.

What happened

The subject matter of the insurance policy was a hatchback car, first registered in 2010. The policyholder acquired the car in about 2021.

For the year from early June 2022, the policyholder had the vehicle insured on a comprehensive policy with Advantage.

In April 2023, the named driver noticed damage to a third party’s parked vehicle. He contacted a member of her family about the damage.

In May 2023, the third party made a claim, through solicitors, to Advantage. The named driver denied causing the damage.

In June 2023, Advantage accepted liability on a without prejudice basis.

In August 2023, Advantage paid the third party’s claim.

The named driver asked Advantage to review the claim.

By mid-November 2023, the named driver had complained to Advantage that it had unfairly treated him as responsible for the damage.

By a final response dated 8 December 2023, Advantage turned down the complaint.

The named driver and the policyholder brought the complaint to us in mid-December 2023.

Our investigator didn’t recommend that the complaint should be upheld. He thought that Advantage had acted fairly.

The policyholder and the named driver disagreed with the investigator’s opinion. They asked for an ombudsman to review the complaint. The named driver says, in summary, that:

- The third party’s claim against him was false.
- Advantage shouldn’t have settled it.
- The claim has adversely affected his no-claims discount (“NCD”) and his premiums.

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.

Advantage's policy terms included the following:

"When defending or settling a claim, your Insurer is entitled to instruct the solicitors of their choice to act for you in any proceedings. If they feel it's appropriate, your Insurer will be entitled to admit liability, for the costs covered under this Policy on behalf of you or any person claiming indemnity under the Policy. Such admissions may be made before or after legal proceedings start."

Advantage's policy terms also included the following:

"Your Insurer has the right to:

- Carry out the repair; and*
- Take over and conduct the defence or settlement of any claim under the Policy for its own benefit. This includes taking proceedings in your name, or in the name of any other person claiming under the Policy, at its own expense. Save in respect of the Excess, Your Insurer has the right to retain sums recovered in full insofar as they reflect the diminution in value of the vehicle.*

These actions may be taken in your name or the name of any insured person."

Such policy terms aren't unusual in motor insurance. The effect is that, on a question of how best to deal with a claim involving a third party, the insurer's view will prevail over its policyholder's view. Nevertheless, I've considered whether Advantage applied its terms fairly in this case.

Advantage took into account the named driver's report (in mid-May 2023) that:

- He heard a bump as he passed the third party's vehicle.
- He didn't stop on that occasion.
- Later he saw a vehicle with a broken wing mirror. He thought he might have caused the damage. So he called at the nearby house and spoke to a member of the third party's family.
- He involved a body-shop manager who said he could fix the damage.
- The family member provided the back of the broken mirror – and another one said to have been found at the scene. The body-shop manager said this showed that it wasn't the policyholder's vehicle that had caused the damage.

Advantage had to respond to the third party's claim. In the absence of an independent witness or video images, it weighed up its prospects of successfully defending the claim. Advantage decided that, rather than incur the cost and risk of court proceedings, It would accept liability on a without prejudice basis.

I consider that Advantage's decision was fair and reasonable in the circumstances. I'm also satisfied that Advantage kept the policyholder informed.

I've seen that Advantage later re-opened and reviewed the claim, but confirmed its decision.

I accept that Advantage's decision will have adversely affected the named driver's claims record and cost of insurance. Nevertheless, I don't find that Advantage dealt with the claim unfairly. So I don't find it fair and reasonable to direct Advantage to change the way it has recoded the claim or to do any more in response to this complaint.

My final decision

For the reasons I've explained, my final decision is that I don't uphold this complaint. I don't direct Advantage Insurance Company Limited to do any more in response to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mr M to accept or reject my decision before 2 August 2024.

Christopher Gilbert

Ombudsman