

The complaint

Miss W complains that Advantage Insurance Company Limited unfairly declined her motor insurance claim.

What happened

Miss W was involved in a car accident in December 2023. She was driving down a road at night when she turned on her car's climate control system to demist the window. However, Miss W says it instead suddenly worsened visibility on the windscreen. Miss W collided with a parked vehicle on the side of the road as well as an oncoming vehicle.

Miss W reported the claim to Advantage but they ultimately declined to cover the claim. They said as Miss W had been aware of an issue with the car's heating system not working correctly, and the demisting function is part of the overall climate control system. They said this meant the car's condition had contributed to the accident. Advantage held Miss W liable for all of the costs of the claim, including the costs of the third parties. But they did feel that they had delayed making a claim's decision and made an offer of compensation of £100.

Miss W felt this was unfair – she said a vehicle's climate control was not checked during an MOT and that it has no bearing on the road worthiness or safety of the car. She felt Advantage were intentionally misinterpreting the wording of the terms of the policy to avoid paying the claim. Unhappy with Advantage's response – she brought the complaint to this Service.

An Investigator looked into Miss W's complaint and thought it was reasonable for Advantage to decline the claim. He thought the car was being driven in an unsafe condition as Miss W knew about the issue with the climate control. But he did think Advantage had caused upset to Miss W in how they'd handled the claim and recommended they pay £300 compensation.

Miss W agreed with the Investigator's findings that Advantage hadn't handled the claim properly. But she disagreed about the claim decline as well as the compensation our Investigator recommended. She asked for an Ombudsman to consider the complaint.

I issued a provisional decision of this complaint on 13 November 2024. I have set out my provisional findings below:

I should start by explaining I've only summarised the background to this complaint in brief, so not everything that has happened or been submitted is set out above in full. I've done this in order to focus on the key issues I need to think about in order to reach a fair and reasonable outcome. But I'd like to reassure the parties that I've read and considered everything that has been provided as part of the complaint.

In brief, Miss W's car's climate control system had developed an intermittent issue where it would blow cold air in the cabin instead of warm air. Miss W had booked the car in to a Mercedes Benz dealership to have this issue looked at. However, before this appointment took place, Miss W was driving the car when she activated the

windscreen demister, and it caused the windscreen to suddenly fog. This meant Miss W's view was obstructed – and as Miss W attempted to stop the car she collided with a parked car as well as another oncoming third-party vehicle.

As I understand them, the parties' positions in brief are as follows:

- Advantage says Miss W was aware of an issue with her car's climate control system which was due to be inspected. Miss W had driven her vehicle regardless of this and, when her vision became obscured by the misted windscreen, she'd collided with a parked vehicle and then hit another oncoming vehicle. Advantage said they were satisfied the accident occurred as a result of Miss W's failure to maintain her car's condition.
- Miss W says she'd been experiencing an intermittent issue with her car's climate control system in the period leading up to the accident date which she'd reported to Mercedes Benz in early December 2023. She said while this was an inconvenience and comfort issue, there had been no prior instances of visibility problems. She said she had specifically asked Mercedes Benz when booking the car in whether she could drive it in the interim period and was told there was no issue with this.
- Miss W also says Advantage's policy wording is ambiguous as the word "condition" is not defined in the policy. And as a car's climate control system is not integral part of its operation or safety, and it's not a feature that's checked as part of a standard MOT service in the UK, it shouldn't apply to the claim. Miss W says the functioning of the car's climate control system had no impact on the condition of the car.

The starting position for me to consider is the term Advantage relied on – it says:

"3. Caring for your car

You, or any person in charge of **your car**, must protect it from damage or loss.

*If the condition of the **car** causes or contributes to an incident, cover won't be provided under the **policy**. **Your insurer's** responsibility will be restricted to meeting obligations as required by Road Traffic Law. In those circumstances, they will recover from **you**, the driver, or any party responsible for the condition of the **car**, all sums paid (including all legal costs), whether in settlement or under a judgement, of any claim arising from the accident".*

I recognise that "condition" is not a defined term in the policy. In situations like these, undefined words are given their ordinary meaning, in the context of the policy as a whole. This means, I need to think about what I consider the ordinary everyday meaning of it is.

The term is one that requires a policyholder to take reasonable care to protect the car from damage or loss. So, I think a reasonable interpretation of a vehicle's condition in the context of this term would be where a driver knew, or should reasonably have known, they were driving a car that was unsafe due to a known defect or problem, and where they then acted recklessly - by choosing to drive despite knowing about that defect, or problem with the car.

Advantage says Miss W knew about the issue with her car's climate control function and she failed to ensure her windscreen was free from obstruction when making her journey. They've said this resulted in the accident and had Miss W chosen to avoid driving in cold or poor visibility conditions prior to the scheduled inspection of her vehicle, the incident would not have occurred.

*In order to reach a fair and reasonable outcome on this point, amongst other things, I've considered relevant law and court cases, in particular the 'reasonable care' test set out in the case of *Sofi v Prudential Assurance* (1993) 2 Lloyd's Rep.559. This says that in order for it to be shown Miss W failed to take reasonable care, Advantage would need to show Miss W recognised a risk but took it anyway by taking measures which she knew were inadequate or no measures at all.*

I've considered all the written submissions as well as Miss W's testimony. I haven't seen any evidence that persuades me Miss W was aware the climate control issue caused the windshield to fog up previously. In fact, early on in the complaint, Advantage said they'd been told this by Miss W – but later withdrew this point and said this had been an error on their part.

Having looked at the testimony provided; I'm persuaded by what Miss W has said about her prior knowledge; in that she was unaware this was an issue that caused visibility problems. Additionally, I find that Miss W took appropriate steps to get the climate control issue looked at by booking her car into the Mercedes Benz dealership for an inspection. What's more, Mercedes Benz specifically told her the car would be ok to drive – so I've not seen anything to persuade me Miss W would have had any reason to believe there was an issue with driving the car. On balance, I don't think Miss W wouldn't have wanted to drive on public roads with visibility issues. And if she had been told not to drive the car, I don't think she would have.

It follows I don't believe Miss W knowingly or recklessly drove her car with knowledge the climate control had the ability to cause visibility issues. Instead, I think this was an accident. So, for the reasons set out above, I do not think applying the policy term as Advantage has produces a fair and reasonable outcome in this particular case, where I think there was a genuine, and understandable, accident.

What was the impact

Miss W has outlined in detail the impact Advantage's actions had on her by declining this claim. I can only imagine how difficult the situation has been on her and the distress and inconvenience caused. I haven't detailed everything here given its personal nature - but I've considered everything Miss W has said about the impact to her.

I've also thought about the handling of the claim in general. The incident occurred in December 2023 and was reported straight away. However, Advantage didn't decline the claim with full reasons until February 2024. Advantage don't dispute there were delays and from the information they've provided there seems to be a period of around two months where Advantage was deciding how to handle the claim.

There are also issues around Advantage's reasons for declining the claim; it appears they initially said they had inspected the vehicle and identified an issue. But later said this wasn't the case and said an inspection wasn't required due to Advantage declining the claim on the basis of Miss W's testimony. Miss W has explained how this misinformation affected her and I'm mindful of Advantages requirements in

providing information which is clear, fair, and not misleading when communicating with their customers.

After the claim was declined, Miss W was left in a situation where her vehicle was returned to her unrepaid – so she couldn't drive it. And she says she has been making regular finance payments while disputing Advantage's claim decision, including incurring costs for independent reports to be carried out.

Miss W also says she had to take a temporary rental car at personal expense while she was trying to settle the car's finance and replace the car with a replacement. I can appreciate this would have been inconvenient to her.

Having thought about the impact I'm minded to increase our Investigator's recommended compensation amount from £300 to £1,000. I'm satisfied this reflects the significant impact Advantage's actions had on Miss W in declining cover for her claim.

Putting things right

I intend to ask Advantage Insurance Company Limited to settle the claim as follows:

- pay Miss W's claim (the total loss value of her car) in line with the remaining terms and conditions of the policy. Advantage should pay 8% simple interest on the total loss payment from when the claim should have been settled until the claim is paid;*
- deal with any third-party claims in line with the remaining terms and conditions of the policy;*
- pay the cost of alternative transport Miss W has incurred upon submission of receipts evidencing this loss. Advantage should pay 8% simple interest on these costs from the date they were incurred until they are settled;*
- pay the cost of any monthly finance payments paid between the accident date and the date of settlement of the total loss of the car;*
- reimburse Miss W's costs of £562.62 recovering the car to her home address and £170 for the independent engineer's report. Advantage should pay 8% simple interest on these costs from the date they were incurred until they are settled;*
- pay £1,000 compensation for distress and inconvenience.*

I invited both parties to respond to my provisional decision with any further information or evidence they wanted me to consider. Miss W agreed with my provisional findings and had no further comments. Advantage responded and said they agreed with the majority of my findings - but questioned the mechanism of settling the outstanding finance payments Miss W had incurred, as well as the compensation I recommended for distress and inconvenience.

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've decided to uphold this complaint, for the reasons given in my provisional decision, with a slight amendment to the way Advantage should settle Miss W's losses.

Advantage has said as Miss W's car was on a finance agreement, this means the payments she's been making to the finance provider have been reducing the total sum owed. Advantage said if they were to pay all of the finance payments Miss W has made for the period I outlined, and then pay the total loss settlement to her directly, Miss W would be getting paid for this loss twice. Advantage said the financial impact to Miss W is therefore the interest she would have paid rather than the monthly payments themselves. Advantage feels the fairer way to conclude this complaint point is for them to pay the interest portion of the monthly payments Miss W made in the time period mentioned.

I note the policy's terms say any total loss payments would be paid to the finance provider first in any event, but having considered this point, I'm in agreement with Advantage that this produces a fair and reasonable outcome. Advantage should pay the finance provider the sum that remains on Miss W's agreement – and then pay the remainder of the total loss payment to her directly, plus 8% simple interest. They should also reimburse the interest portion of Miss W's monthly finance payments – so, Miss W will need to provide copies of the interest breakdown to Advantage for them to consider.

Advantage has also asked me to provide a breakdown of the compensation award I made. They've said this Service usually would make an award of compensation for delays of £100 per month.

A compensation award isn't intended to fine or punish a business, it's to recognise the impact the business' actions have had on their customer in a particular complaint. This Service's approach to compensation awards can be found on our [website](#). When deciding what amount would be fair, my award takes into account how I consider Miss W was affected.

While Advantage have referred to an award for claim's delays – I've looked at the overall impact Advantage's actions had. I'm satisfied Advantage's actions in declining cover for Miss W's claim caused substantial distress, upset and worry for Miss W. And I can see she has had serious disruption to her daily life over a sustained period; having to contact numerous other parties in order to make detailed and extensive submissions to both Advantage and this Service.

I've also seen evidence from Miss W which describes the impact to her health and wellbeing. I haven't detailed everything here given its personal nature, but I consider it to be relevant, given my findings that Advantage declined cover when they shouldn't have. As such, having considered Miss W's testimony, I'm satisfied my compensation award of £1,000 is fair and reasonable in the circumstances and reflects the impact Advantage's actions had on her.

Putting things right

I require Advantage Insurance Company Limited to do as follows:

- deal with any third-party claims in line with the remaining terms and conditions of the policy;
- pay Miss W's claim (the total loss value of her car) in line with the remaining terms and conditions of the policy. Advantage should pay the finance provider

any sum remaining on the agreement with Miss W – and the remainder of the claim value to her directly, plus 8% simple interest on the total loss payment to Miss W, from when the claim should have been settled until the claim is paid;

- pay the interest cost of any monthly finance payments paid between the accident date until the claim is paid, upon submission of receipts evidencing this loss;
- pay the cost of alternative transport Miss W has incurred upon submission of receipts evidencing this loss. Advantage should pay 8% simple interest on these costs from the date they were incurred until they are paid;
- reimburse Miss W's costs of £562.62 recovering the car to her home address and £170 for the independent engineer's report. Advantage should pay 8% simple interest on these costs from the date they were incurred until they are paid; and
- pay £1,000 compensation for distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint and require Advantage Insurance Company Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 30 December 2024.

Stephen Howard

Ombudsman