

complaint

Miss P is complaining that Advantage Insurance Company Limited (Advantage) has found her partially responsible for an accident after she made a claim on her car insurance policy.

background

Miss P took out a car insurance policy through Advantage. The named driver on the policy (Mr P) was involved in an accident so they reported the incident to Advantage to claim for the damage on Miss P's policy. They said that Mr P was turning right when the other driver suddenly tried to overtake them at speed and collided into their car. Miss P said it was a single lane, so she says the other driver shouldn't have looked to overtake them. And she held the other driver fully at fault.

Advantage said that it would look to hold the other driver at fault, but said that the claim may be settled on a split liability basis. Miss P didn't agree with that and maintained that the other driver was fully at fault. Advantage asked if there were any witnesses to the accident or potential CCTV footage. Miss P said there was a nearby business centre which was likely to have CCTV footage and she asked Advantage to get that. The call handler said that usually it would be for her to get it and he asked that she contacted the businesses to get it. Miss P said that she'd wait to see the outcome of the liability investigation before she did so.

Advantage later agreed to settle the claim on a 50/50 split liability basis. It said case law suggests that Mr P would be held partially responsible for the accident as he had a responsibility to ensure it was clear to turn right and be aware of cars coming from behind.

Miss P then complained to Advantage about the way it had handled the claim. In particular she raised the following points:

1. Advantage didn't get the CCTV footage which she says would have shown she wasn't at fault for the accident;
2. Advantage didn't give her any updates on the claim and she says she only got updates when she asked what was happened;
3. The other driver used a solicitor rather than their own insurer. She thinks she would have got a more favourable outcome had she done so. She thinks Advantage has taken the easier option just to settle the claim;
4. She spent three hours on the phone – often on hold – and had to dispute at length with Advantage's call handler that her no claims discount wouldn't be affected because it was protected;
5. She wasn't given a courtesy car straightaway and had to make a number of calls to get it. She's also unhappy that Advantage then suddenly took it away despite previously reassuring her that it would give her 24 hours notice.

Advantage initially apologised for the length of time Miss P had to spend on the phone due to long wait times. And it offered her £30 in compensation for that. It later reviewed the way it had handled the claim and it agreed with Miss P that the customer service it had provided wasn't of the standard it would expect. And it offered her a further £150 in compensation. But it said it was entitled to make the decision to settle the claim on a split liability basis.

Miss P then asked this service to step in. Our adjudicator partially upheld the complaint. He thought Advantage's compensation offer for the customer service provided was fair. He also thought it was entitled to make the decision to settle the claim on a split liability basis. But he

said that it should have also clearly explained to Miss P when she first called to report the incident that CCTV footage is usually only kept for 30 days. And he thought, had it done so, Miss P would have taken steps to recover it. He said he didn't think it would have changed the outcome, but he thought that this had caused Miss P some further distress and inconvenience. And he thought Advantage should pay her a further £100 in compensation.

Miss P accepted the adjudicator's opinion, but Advantage didn't agree. So the complaint's been passed to me to decide.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've decided to uphold this complaint and I'll now explain why.

There are two issues to this complaint that I have to consider:

1. Was Advantage's decision to settle the claim on a split liability basis fair; and
2. Is its compensation offer for the way it handled the claim fair?

I shall deal with each point separately.

decision to settle the claim on a split liability basis

I should first explain that this service isn't able to say who's at fault for causing an accident, as that is the responsibility of the courts. Our role is to look at whether Advantage has carried out a fair investigation, reviewed all the evidence it has and come to a reasonable decision.

Miss P's policy, like all other car insurance policies, allows Advantage to "*take over and conduct the defence or settlement of any claim.*" So it's entitled to settle the claim, on the best terms it thinks fit. And it has the ultimate and final say in how to settle a claim. But it must exercise this right fairly and reasonably.

Advantage has said that previous case law suggests that a court would have found Mr P partially responsible for the accident. It said that, as the party turning right, he had a responsibility to ensure it was clear to do so. And it said that included being aware of any vehicles coming from behind him. Miss P said that this case law was in respect to being aware of motorcycles. And she maintained that the other driver was driving contrary to the requirements of the road. I note her comments, but I can't say that Advantage has come to an unfair conclusion, given previous case law and Mr P's responsibility under the Highway Code. It's entitled to consider its previous experience in similar cases and the likely outcome if the claim was to proceed to court.

However, I agree with the adjudicator that Advantage should have been clearer with Miss P that she would only have 30 days to request the CCTV footage. I also think it should have taken steps itself to get the footage. But I'm not persuaded that it would have likely to have changed the outcome, given the case law and Mr P's responsibility under the Highway Code.

The facts of the matter weren't in dispute and, even if the CCTV footage fully supported Miss P's version of events, I think Advantage would have still come to the same conclusion. And it was entitled to make this decision under the terms of the policy.

However, I think this would have caused her some further distress and inconvenience in finding out she's lost the opportunity to get this herself – especially given she's pursuing a private legal claim against the other driver. And I agree with the adjudicator that Advantage should pay her a further £100 for this.

customer service

I've taken all of Miss P's comments in this respect. Advantage has also acknowledged that her concerns are justified. But it's already offered her £180 in compensation for this – £30 for the length of time she was on hold and £150 for the general customer service it provided her. I think this is in line with what I would have awarded so I haven't commented on her concerns in this respect, apart from to say I agree with her that the customer service Advantage provided her wasn't what she was entitled to expect.

my final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint. And I require Advantage Insurance Company Limited to increase the compensation it's offered to £280 for the distress and inconvenience it's unfairly caused Miss P for the way it handled this claim. It should pay this to her directly if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 27 April 2019.

Guy Mitchell
ombudsman