

## **The complaint**

Mr P and Mr G complain that Advantage Insurance Company Limited mishandled a claim on a motor insurance policy.

## **What happened**

Mr P or his mother had a small hatchback car, first registered in about 2018. For the year from mid-August 2021, Mr P had the car insured on a comprehensive policy. Mr P was the policyholder. His mother and his partner Mr G were named drivers.

The policy was branded with the name of an insurance intermediary. Advantage was the insurer that was responsible for dealing with any claim.

Any claim for damage (except to a windscreen) was subject to an excess of £95.00.

According to the policy schedule, Mr P had two years' no-claims discount ("NCD"). It wasn't a "protected" NCD. But a feature of the policy was an "Uninsured Driver Promise" that Mr P wouldn't lose his NCD or pay any excess if – without Mr P's fault - his car was hit by an uninsured driver.

Unfortunately, in early February 2022, Mr P's car sustained cosmetic damage in an incident with another vehicle. That other vehicle had no insurance recorded on the motor insurance database. Its driver didn't stop at the scene to exchange contact details and remained unidentified.

Advantage met Mr P's claim and waived the excess.

Much of the complaint is about the acts or omissions of the intermediary in responding to the claim on behalf of Advantage. Insofar as I hold Advantage responsible for such acts or omissions, I may refer to them as acts or omissions of Advantage.

For the year from mid-August 2022, Mr P says he took out a new policy.

In late January 2023, Advantage said that it would record a "fault claim" against Mr P – and he had lost his NCD. Mr P complained about that.

By a final response dated early February 2023, Advantage turned down the complaint. It said that the uninsured driver promise only applied if Advantage had identified the driver.

Mr G and Mr P brought their complaint to us straight away.

Our investigator recommended that the complaint should be upheld in part. She thought that Advantage had fairly logged the claim as "fault" on the CUE (Claims Underwriting Exchange) database. But she thought that it was not fair or reasonable to remove the NCD. She recommended that Advantage should:

1. reinstate the NCD and provide an updated copy of the NCD certificate to present to

the new insurer; and

2. compensate Mr G and Mr P £100.00 for the inconvenience the error has caused to them.

Mr P agreed with the investigator's opinion.

Advantage disagreed with the investigator's opinion. It asked for an ombudsman to review the complaint. It says, in summary, that:

- The promise only applied once the driver was identified.
- There are instances where the driver can be insured where the vehicle isn't on the Motor Insurance Database – such as trade insurance on individuals and organisations rather than on the specific vehicle.
- Failing to stop could be for more reasons than just being uninsured – it could be the vehicle was taken without consent, the driver was under the influence, the driver was in possession of illegal items in the vehicle etc.
- Mr P's version of events was that he was driving along the road when the third party's vehicle changed lanes into his path. Without CCTV or witnesses, there would be no evidence to prove who changed lanes.
- The fact that the driver didn't stop would suggest they wouldn't assume responsibility for the accident, and this would have likely been split liability, if the driver were identified.

### **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.

Where an insurer has made an outlay on a policyholder's claim, it's common practice for that insurer to record the claim as a fault claim against the policyholder unless and until the insurer has recovered its outlay in full, typically from a third party's insurer. So a "fault" claim doesn't necessarily mean the policyholder was responsible for causing the damage.

That practice is reflected in the policy terms (Section 9). Advantage couldn't identify or pursue the third party or their insurer. So Mr P has rightly accepted that Advantage didn't act unfairly by recording a fault claim against him.

So I turn to the remaining issue of the uninsured driver promise. That was in the policy booklet as follows:

#### ***"Section 10***

##### ***Uninsured driver promise***

***Your Insurer promises that if you're involved in an accident that isn't your fault and the driver of the vehicle that hits you doesn't have motor insurance:***

- ***You won't lose your no claims discount***
- ***You won't have to pay any Excess/es.***

***To benefit from this promise you must send us the make, model and registration number of the vehicle that caused damage to your Car and, when possible, tell us the other driver's name and address.***

***When you make a claim, you may initially have to pay your Excess/es. If investigations are still taking place when your renewal is due, you may lose your no***

*claims discount temporarily, as explained above. Once your Insurer has confirmed the accident was the fault of an identified uninsured driver, your Insurer will refund your Excess, restore your no claims discount and refund any extra premium you have paid.*

The bold type was in the policy booklet.

The intermediary has placed emphasis on the following section and in particular the last sentence. So I've added the underlining. I accept that the words I've underlined were a condition that Advantage had confirmed that the accident was the fault of an identified uninsured driver.

However, the context includes the fact that it is a criminal offence to drive a vehicle on a road without third party insurance. So an uninsured driver is less likely than others to want to be identified.

So – in an “*Uninsured Driver Promise*” - I regard the condition of identification as an onerous or at least a significant term.

Therefore I've thought about whether the underlined words were sufficiently clear in the policy documents.

The words in bold type suggest that the policyholder will benefit from the promise if he tells Advantage the details of the third party's vehicle and “*when possible*” the name and address of the driver.

Also, the Insurance Policy information Document included the following summary:

*“Uninsured driver promise: you won't lose your no claims discount or pay any excess if the accident wasn't your fault”*

So I'm not satisfied that the condition of identification was sufficiently clear.

I accept that it's possible that the third party driver had third party cover on a policy not recorded against the vehicle he was driving. I also accept that the driver may have had other reasons for not stopping.

However, I keep in mind that the vehicle wasn't insured, and the driver didn't stop. So I find it more likely than not that the driver was uninsured and was at fault for the accident.

In my view, an uninsured driver who didn't stop is unlikely to have credibility as a witness if, for example, they later dispute liability for the accident.

I regard it as highly unfair that Advantage should cast doubt on Mr P's version of events in the absence of any version of events from the third party driver. If that driver had been identified, they were unlikely to give a credible version of events that Mr P had been at fault.

Also, an uninsured driver will often not have sufficient financial means to make it worthwhile for an insurer to seek to pursue them for recovery of its outlay.

So I don't consider it likely that the lack of identification of the driver caused any prejudice to Advantage.

For all these reasons, I don't find it fair and reasonable for Advantage to rely on the condition of identification in declining to make sure that Mr P didn't lose his NCD. By unfairly reducing his NCD – it's likely that Advantage caused him a higher premium.

Also, I don't doubt that Advantage caused Mr P and Mr G upset that it had not honoured its promise – and caused them extra trouble in looking for affordable insurance.

### **Putting things right**

I've thought about what to direct Advantage to do to try to put things right.

I find it fair enough to direct Advantage to write a letter to Mr P (which he may show to current and future insurers) saying that – as at August 2022 – he had three years' NCD.

Also, I find it fair and reasonable to direct Advantage to pay Mr P, and jointly Mr G, £100.00 for distress and inconvenience.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Advantage Insurance Company Limited to:

1. write a letter to Mr P (which he may show to current and future insurers) saying that – as at the expiry of its policy in August 2022 – he had three years' NCD; and
2. pay Mr P, and jointly Mr G, £100.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mr G to accept or reject my decision before 15 August 2023.

Christopher Gilbert

**Ombudsman**