

The complaint

Mr K complains about how Advantage Insurance Company Limited handled a claim made on his motor insurance policy. He wants it to pay for his car repairs and compensate him for his trouble and upset.

What happened

Mr K was involved in an incident and told Advantage that CCTV footage would likely be available to show he wasn't at fault. But he said that it didn't obtain the footage and so this evidence was lost. Advantage paid Mr K £30 compensation for this. But Mr K said this wasn't sufficient and he had to pay for his car to be repaired after it broke down following the incident.

Our Investigator recommended that the complaint should be upheld. She saw that Advantage had tried to obtain the footage, but it hadn't followed this up. She couldn't say what the footage would have shown. But she thought Advantage hadn't done enough to gather the evidence when investigating the claim. And she thought it should pay Mr K £50 further compensation for the upset caused. She also thought that as Mr K had paid for his own repairs, Advantage had reasonably offered to consider his repairs invoices.

Advantage agreed to do this. But Mr K replied asking for an Ombudsman's review, so his complaint has come to me for a final decision. He said Advantage hadn't made any offers to review his repairs invoices. He said not having the CCTV evidence had prejudiced his claim against the other driver's insurer. And he thought £50 further compensation was insufficient for the trouble and upset caused.

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 K said another driver had reversed into his parked car. But the other driver said Mr K collided with his car. There were no independent witnesses or dashcam footage. But Mr K said there was a CCTV camera just above his car and he thought this would have captured the incident and showed him to be not at fault.

The Investigator has already explained that it isn't our role to decide who was responsible for causing the accident. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate how the insurer made the decision to settle the claim. Did it act fairly and reasonably and in line with the terms and conditions of the policy? And has it treated Mr K the same as someone else in his position.

Advantage is entitled under the terms and conditions of its policy with Mr K to take over, defend, or settle a claim as it sees fit. Mr K has to follow its advice in connection with the settlement of his claim, whether he agrees with the outcome or not. This is a common term in motor insurance policies, and I do not find it unusual. Insurers are entitled to take a commercial decision about whether it is reasonable to contest a third party claim or better to compromise.

That said we expect an insurer to reasonably investigate a claim and consider the evidence available before making its decision on liability. And I agree with the Investigator that, on this occasion, Advantage failed to do this. This is because although it wrote to the CCTV camera's owner on the day Mr K reported the accident, it didn't follow this up by phone or email when no response was received until Mr K asked for an update two months later. And so any possible evidence was lost.

Advantage then asked the camera's owner if it would have recorded the incident. And the owner said it was unsure as the camera wasn't always turned on. So, even though the camera may have been pointing in the direction of Mr K's car at the time of the incident, I can't be sure what it would have shown. And so I can't safely say that the loss of this possible evidence prejudiced Mr K's position in recovering his losses.

Advantage paid Mr K £30 for the frustration this caused him. And I agree with the Investigator that this was insufficient in the circumstances. I agree that Advantage should pay Mr K a further £50 in compensation for the trouble and upset caused. I think this is fair and reasonable as it's in keeping with our published guidance for this sort of error.

Advantage has now received Mr K's invoices and it said it will review them. If Mr K is unhappy with the outcome, he should complain again to Advantage and, if he remains unhappy, then he can bring his complaint to us.

Advantage has confirmed that liability hasn't yet been settled and I don't think this is unusual. In the meantime, Mr K has renewed his insurance elsewhere with an open claim on his record. This would always be treated as a fault claim until the insurer recovered all its outlay and so this may have led to an increase in premium. The Investigator has already explained that, if the claim is settled as non-fault, then Mr K can ask his current insurer to recalculate his premium.

Putting things right

I require Advantage Insurance Company Limited to pay Mr K £50 further compensation for the distress and inconvenience caused by its handling of his claim.

My final decision

For the reasons given above, my final decision is that I uphold this complaint in part. I require Advantage Insurance Company Limited to carry out the redress set out above, as it's already agreed to do.

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

Phillip Berechree
Ombudsman