

## **The complaint**

Mr D has complained about the way Advantage Insurance Company Limited handled things when he notified it of an incident where no party wished to claim.

All reference to the insurer Advantage in my decision includes its agents.

## **What happened**

In October 2022 Mr D had parked outside his home when his child's friend (who was a neighbour) opened his car door to exit without checking. As they did so, another neighbour couldn't avoid the open car door and their car collided with Mr D's door.

For ease I'll refer to the mother of the child who opened the car door as neighbour 'A' and the neighbour (both named driver and main policyholder) who collided into the open car door as neighbour 'B'. Neighbour B is the third party.

Mr D said that they agreed that neighbour B would obtain quotes for repairs to their car and that neighbour A would meet the costs, reimbursing neighbour B directly. Mr D says none of the parties involved wanted to claim through their insurance policies and agreed to deal with the matter privately. Mr D said there was no noticeable damage to his car.

While waiting for the quotes from neighbour B, Mr D notified Advantage of the incident, as he was obliged to under his policy. He made it clear that none of the parties wished to claim. He provided the registration details of neighbour B's car but didn't have any other contact details to offer.

Advantage obtained details of neighbour B through the registration details and called neighbour B's partner who was the main driver under the policy. Advantage told neighbour B that Mr D had contacted it about the incident and accepted liability - so offered neighbour B services to claim against Mr D's policy.

Neighbour B was surprised that Mr D had contacted Advantage. Neighbour B asked if he could first speak to Mr D before proceeding with a claim as he understood they'd agreed not to make a claim through their insurers. Advantage said they would call neighbour B back the following day.

When Advantage called neighbour B back the next day, he said that he decided not to speak to Mr D on the basis that Mr D had contacted Advantage and accepted liability. He remained surprised that this had happened, as he'd gone to the trouble of obtaining estimates and believed no party was intending to claim through their insurers.

Advantage repeated its offer for neighbour B to claim against Mr D's policy, which he agreed to do.

In November 2022 Mr D complained to Advantage. He said he and his wife had asked neighbour B for the quotes and discovered that Advantage had contacted them, said Mr D had accepted liability for the incident, and led them to believe Mr D no longer wanted to settle the matter privately. Mr D said he was shocked to discover that Advantage had settled neighbour B's claim without telling Mr D.

Mr D said as a result of Advantage pursuing neighbour B, a claim has been recorded instead of a notification only, and this has impacted his No Claims Bonus (NCB) which in turn will impact his future premiums.

Advantage didn't uphold Mr D's complaint. It said that it retains the right to subrogate (put itself in the place of Mr D) for any claim which might be made against it as the insurer liable for the incident. It said when it called neighbour B back the following day, he accepted its offer of services to claim against Mr D's policy.

Mr D remained unhappy. He said both parties had made it clear to Advantage that they didn't wish to claim, but Advantage actively pursued neighbour B to make one. Mr D asked us to look at his complaint.

On listening to the key calls, our Investigator recommended the complaint should be upheld. He thought Advantage had misled neighbour B when it called him and this led to neighbour B deciding to claim against Mr D's policy. So he recommended Advantage put things right and reinstate Mr D's NCB, record the incident as a notification only and pay Mr D £250 compensation for the distress and inconvenience caused.

Mr D accepted the Investigator's view. Advantage disagreed. In summary it says Mr D would have been responsible for neighbour B's repair costs anyway. If this service considers it right for Mr D's NCB to be reinstated and the claim recorded as a notification only, it offered for Mr D to pay the claim costs of £495.95. It offered to offset the £250 compensation recommendation against the £495.95, so reducing the amount Mr D would owe to £245.95.

The Investigator remained of the view that Advantage had failed to follow its process correctly - and had it done so, no claim would have been made. He explained that the private agreement was for neighbour A to reimburse neighbour B directly - and but for Advantage's actions, Mr D was not expected to pay anything. But because of Advantage's actions, a fault claim has been recorded against him and his NCB has been reduced.

Advantage said it can deal with a claim how it sees fit. It made Mr D aware it may contact neighbour B in the notification call and this is what it did. It says the incorrect information was given by Advantage in the notification call when it wrongly told Mr D it would record the matter as a notification only. It says at that stage it was correct to say they would speak to neighbour B first and offer services.

Advantage says if neighbour B had accepted - which they did - it would have given Mr D the option to pay back the claim. This is what it is offering Mr D now. It says there is no evidence the agreement would have been honoured.

Advantage accepts there has been a loss of expectation, but says it dealt with the claim correctly.

So as Advantage disagreed, the case has been passed to me to decide.

### **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.

Throughout Advantage's communication with us, it has said that it had the right to subrogate a claim. I've listened to the key calls and it is very clear that both Mr D and neighbour B did not want to claim through Advantage and had agreed to settle the matter privately. So there was no intention from either party to claim.

There is nothing wrong in Advantage's decision to contact neighbour B. But Advantage told neighbour B that Mr D had contacted it to accept full fault and so this was why it called neighbour B. I think Advantage misled neighbour B into believing that - against the private agreement reached - Mr D wanted to deal with matters under his insurance policy - and that was not the case. Neighbour B repeatedly expressed his surprise that Mr D had contacted Advantage - and he supported Mr D's account that they'd agreed to deal with matters privately. He said he wanted to speak to Mr D before making a decision, which Advantage agreed to and said it would call him back the following day. When it did, neighbour B said he

decided not to speak to Mr D as he thought there was no point. He said he'd suggested not going through the insurers with Mr D. But because Advantage had called him, this meant Mr D must have wanted matters to go through the insurers. So for this reason he accepted Advantage's offer of services to claim against Mr D's policy.

So I find Advantage's actions here unreasonable. It should have been clearer in the call with neighbour B that Mr D had called to notify it of the incident - and when neighbour B confirmed the agreement as the same as Mr D had told Advantage, Advantage should have confirmed. But it didn't. If it had, I am of the view that no claim would have been made against Mr D's policy. So I don't think it fair that Mr D should have the consequences of a fault claim recorded against him.

This means I'm upholding this complaint. I think Advantage's handling of the notification has caused unnecessary distress for Mr D. He has explained that the way the notification was handled has caused a strain in the relationship between the neighbours involved. So I think Advantage should pay Mr D £250 compensation for the distress and inconvenience caused.

Advantage says there is no way of knowing if the agreement would have been honoured. But I'm satisfied that based on both neighbour B and Mr D's calls with Advantage, it is clear both parties understood the agreement and were happy with it.

So I think Advantage should change how it has recorded the incident and claim on external databases. It should be changed to a notification only - in line with what Mr D and neighbour B had agreed. I don't think it fair that Mr D should be responsible for any claim costs and his NCB should be reinstated. I think Advantage should provide a letter confirming the correct recording of the claim and the reinstatement of Mr D's NCB, so that he can show this to future insurers if necessary.

### **My final decision**

My final decision is that I uphold this complaint. I require Advantage Insurance Company Limited to do the following:

- Update any external databases to reflect the claim as a notification only and to reinstate Mr D's NCB to what it was before the incident in October 2022.
- Provide a letter to Mr D confirming the claim as a notification only and the correct NCB status.
- Pay Mr D £250 compensation for the distress and inconvenience caused.

Advantage Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Mr D accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 20 September 2023.

Geraldine Newbold  
**Ombudsman**