

The complaint

Mr S complains about how Advantage Insurance Company Ltd (“Advantage”) handled a claim under his motor insurance policy.

What happened

Mr S had a motor insurance policy with Advantage.

Late on 12 April 2020, Mr S was involved in an incident with a third party. He stopped, then left the scene of the incident, went home and consumed some alcohol.

He was arrested a few hours later, in the early hours of 13 April. The police arrested him for failing to stop and suspicion of being unfit to drive. It suspected he would have been over the alcohol limit at the time. Mr S then refused to provide a breathalyser sample.

Advantage was notified about the incident about two months later by a third-party insurer which was seeking to recover its costs. Mr S said he did try to tell Advantage about the incident, but there was a ten-hour wait to do so. He hasn’t claimed for the damage to his own car.

Later, Advantage cancelled Mr S’s policy after he was convicted of failing to provide a breathalyser sample and his driving licence was suspended.

Advantage paid the cost of the third-party claim, and said Mr S needed to repay it.

Mr S complained about Advantage’s lack of communication and handling of the claim. He asks that Advantage change its decision and doesn’t recover the third party’s claim payment from him.

In its final response, Advantage said it didn’t do anything wrong.

Mr S remained unhappy and brought his complaint to this service. Our investigator looked into it and upheld it. She said she couldn’t be certain that Mr S was over the alcohol limit at the time of the incident. She thought Advantage should pay Mr S £150 for his distress, and not recover the cost of the claim from him.

Advantage didn’t agree with the view. Because it didn’t agree, this complaint has been passed to me to make a final decision.

I issued a provisional decision which didn’t uphold Mr S’s complaint. This is included below:

Our approach in cases like this is to consider whether the insurer has acted in line with the terms and conditions of the policy, and fairly and reasonably.

Advantage said it had declined Mr S’s claim because he’d failed to provide a specimen of his breath.

The appropriate part of the policy wording dealing with Mr S’s failure to supply a breathalyser

sample is this:

“You’re not covered if an accident happens while you or anyone entitled to drive under your current Certificate of Motor Insurance:

- Is found to be over the prescribed limit for alcohol or drugs in the country where the incident happens*
- Is driving while unfit through alcohol, drugs or other substances, whether prescribed or not*
- Doesn’t provide a sample of breath, blood or urine when required to do so, without lawful reason.”*

That’s not an unusual exclusion in my view and I’m satisfied that it is clear enough.

The first part of the exclusion relates to a conviction for being over the alcohol limit, and Mr S says he wasn’t prosecuted for this. The second part similarly deals with being unfit to drive.

Mr S was arrested on suspicion of this, but again this wasn’t taken to prosecution.

But it’s my understanding of Mr S’s case that he refused to provide a sample of his breath – which would have been required to prove an offence of driving while unfit. This refusal to provide the sample is the reason why Advantage has rejected his claim, as it means his policy didn’t cover the incident in question.

Mr S points out that his refusal to provide the sample was “not related to driving during the time [the incident] happened”. I take his point that he says he returned home and consumed alcohol before the police attended and asked for a sample, but I think the exclusion is clear and Advantage has applied it fairly. So I’m not intending to ask it to change its decision in any way.

Mr S also said he wasn’t aware Advantage was asking for him to pay the third-party claim. I can see that Advantage were handling this and, in common with many of these claims, much of this took place over an extended period of time.

I appreciate Mr S has said he wasn’t kept up to date, but I don’t think Advantage had much reason to contact him as it was waiting for the police to investigate and the court to rule before it could progress the claim.

Taking everything into account, I don’t think Advantage has acted unreasonably and I’m not intending to ask it to do more.

Responses to my provisional decision

Mr S responded and didn’t agree. He makes several points about the timing of the collision, and the breathalyser sample. He says the police withdrew some of the charges against him relating to the collision.

Mr S also talked about the timing of Advantage’s cancellation of his policy which took place some time after the collision.

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.

I've thought about Mr S's reply to my provisional decision carefully. I need to point out to him that it's my role to assess whether Advantage has acted fairly and reasonably in handling his claim.

And in his case, I think it has. I've explained in my provisional decision that I think it's fair that Advantage didn't cover his claim because he'd failed to give a sample of his breath to the police. It's expressly allowed to do this under the policy wording.

Advantage is required to handle the third-party claim under the relevant part of the Road Traffic Act, and then it can seek to recover its costs from Mr S.

Mr S has said he finds it unfair that Advantage was able to make the decision about fault for the collision and didn't tell him about it. In his policy wording I can see this section:

"If they feel it's appropriate, your Insurer will be entitled to admit liability, for the costs covered under this Policy on behalf of you or any person claiming indemnity under the Policy."

This type of condition is common in motor insurance policies and I think it's fair for Advantage to apply it here.

Mr S also asked about a "legal defence" cover he says he paid for under his policy. This didn't form part of his approach to this service, so I'm not able to consider this further.

Mr S has also made various point about how Advantage cancelled his policy and didn't keep him up to date with his claim. I've dealt with Advantage's communications in my provisional decision and I don't propose to talk about that further.

I can see from the policy wording that Advantage is allowed to cancel a policy with at least seven days' notice, with a pro-rata refund, at any time during the policy. So I don't think Advantage has acted unfairly in cancelling Mr S's policy in this way.

My final decision

It's my final decision that I don't uphold this complaint..

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 August 2023.

Richard Sowden
Ombudsman