

The complaint

Mr M complains that Advantage Insurance Company Limited, trading as Hastings Direct, (Hastings) unfairly declined a claim for the theft of his son's car and he wants his claim to be paid.

While this complaint mainly relates to Mr M's son (also Mr M), for ease, I'll only refer to a singular Mr M throughout this decision. But that reference will include all submissions made from both Mr M and his son.

What happened

Mr M held a motor insurance policy with Hastings. In 2018 Mr M advertised his car for sale, and his son, who is the registered keeper of the car, was visited by an individual who claimed to be an interested buyer. I'll call this individual 'X'.

After inspecting the vehicle, X asked to take Mr M's car for a test drive. And Mr M said that X told him that he had a driving licence and was insured to drive the car, so he agreed to a test drive, and sat in the passenger seat while this took place.

Mr M explained that part way through the test drive, X said he liked how the car drove, and asked if they could they pull over to take another look at the outside of the car. Mr M agreed.

Mr M said the engine was left running and the keys were in the front of vehicle while he and X walked around the car. Mr M also noted that the vehicle operated on a keyless start. He said he began discussing the sale with X, including whether he would agree to a price reduction due to tyre wear and tear. And it was during this discussion, while standing at the rear of the car, that X suddenly ran and jumped in the vehicle and drove off. Mr M said he tried to give chase but was unable to catch him. He subsequently raised the matter with the police and made a claim under his insurance policy.

Hastings declined Mr M's claim as they said the policy excludes loss as a result of:

"Theft of or damage, if the Car Keys were left in or on the Car or if the Car is left unattended with the engine running"; and

"loss or damage if someone claiming to be a buyer or agent takes possession of your Car deceitfully".

Unhappy with Hastings' response, Mr M brought his complaint to our service.

An investigator initially said that Mr M's case should be upheld. But having reconsidered all the evidence, he then thought Hastings was not wrong to have declined it, because the circumstances in which the theft took place were specifically excluded.

Mr M, unhappy with the investigator's findings, has pointed to specific case law both in his initial submissions, and in response to the investigator's opinion, which he thinks supports that his claim should be paid.

So as no agreement's been reached, the case has come to me, as an ombudsman, to decide.

I think it's important to say at the outset, my role is to reach a fair and reasonable outcome in the specific circumstances of Mr M's case, and that while I will of course take the law into account when considering cases, I'm not bound by it.

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 know Mr M is concerned that the investigator changed his mind during the course of his investigation. But I'd like to assure him, that as an ombudsman, I carry out a fresh and independent review of the evidence. I'd also like to point out that while a number of matters and points have been raised on both sides, I will focus on what I think are the main issues. But I've given careful consideration to all submissions before arriving at my decision.

Having done so, I think the investigator has reached a fair outcome here, so I won't be upholding Mr M's complaint. I'll explain why.

When considering cases of this nature I need to look at the circumstances of what happened, what the policy is designed to cover and what it specifically excludes.

Mr M's policy includes cover for loss of his vehicle as a result of theft or attempted theft. But it also has some specific exclusions.

The first exclusion mentioned by Hastings is that a policyholder is not covered for *"theft or damage, if the Car Keys were left in or on the Car or if the Car is left unattended with the engine running"*.

Our position regarding cases where the engine has been left running or where keys have been left in a car has been established over a long period of time. When considering matters like these, as well as looking into whether physical keys were left in the vehicle, we also need to consider whether the insured remained in a position to deter the thief or make a theft unlikely to take place.

Hastings has argued that Mr M was clearly not in a position to deter the thief, as the vehicle was still stolen. But I disagree. The test here is whether Mr M was in a position to deter the thief or make a theft unlikely. I don't agree that the fact the vehicle was stolen is enough to prove that Mr M was not in a position to deter the thief. This just demonstrates that Mr M was not successful in doing so.

Mr M explained that at the time of the theft, he was standing at the rear of the vehicle with X and that, as X ran and jumped into the car, he gave chase but was unable to prevent the theft. I haven't seen anything from Hastings to cause me to doubt Mr M's testimony. So, based on this, I don't think it's fair for Hastings to decline Mr M's case under this exclusion. This is because I think Mr M remained in a position to be able to deter the thief or make the theft unlikely.

The second exclusion under which Hastings say Mr M's claim is not covered, states *"you are not covered for Loss or damage if someone claiming to be a buyer or agent takes possession of your Car"*. It's not in dispute that this is what happened - an individual, claiming to be a buyer, took possession of Mr M's vehicle. So, I need to decide whether it's fair for Hastings to apply this exclusion in the specific circumstances of Mr M's case.

When X turned up to look at Mr M's vehicle, he claimed to be able to legally drive the vehicle under his insurance, and said he had a valid licence. And Mr M has explained that he accepted this and didn't check these documents before allowing him to drive.

While I accept that purely seeing the above documents may have not prevented the theft, it's also unclear whether these documents existed. So, in asking for them, Mr M would have added an additional layer of security that may have deterred the thief, and potentially made the theft less likely. If X needed to provide these documents before Mr M allowed a test drive, he would have had to either provide false paperwork, or risk sharing personal details with Mr M which could have made him more likely to be caught.

I've explained above why I think standing at the back of the car with the engine running and keys inside, isn't enough in itself for Mr M to have his claim declined. But at the point Mr M's car was stolen, very little had been done to verify X's identity. And I think had more been done, the chances of his car being stolen would've likely reduced. So, for this reason, I think it's reasonable for Hastings to have declined Mr M's claim in these particular circumstances – as his loss was as a result of an individual claiming to be buyer taking possession of his vehicle, which is specifically excluded.

Mr M also says that he never received a copy of his policy. But Hastings says the policy was sent to Mr M, and I can't see that he contacted them to say he hadn't received it. So I think it's more likely he received the policy document from Hastings. I think it's important to say that this isn't an unusual or onerous term for an insurance policy of this nature, and therefore isn't one that needed to be specifically brought to his attention. So even if I were to accept Mr M never received the policy, I don't think the events surrounding the theft were reasonably foreseeable enough to conclude that, had Mr M read the policy, he would've acted differently.

I appreciate Mr M has taken his time in setting out why he thinks Hastings were wrong to have declined his claim, and why he thinks his claim should have been paid. But, for the reasons set out above, I don't think Hastings were wrong in declining his claim and, therefore, I won't be instructing them to do anything differently.

My final decision

My final decision is that I do not uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 June 2020.

Brad McIlquham
Ombudsman