

The complaint

Mr B has complained about Berkshire Hathaway International Insurance Ltd's (BHII) handling of a claim on his motor insurance policy.

Reference to BHII includes its agents.

What happened

In April 2020 Mr B's car was damaged in what appeared to be an attempted theft of it or from it outside his home in the early hours of the morning. Mr B said he saw people interfering with his car but they ran away when a light came on. He said he put his porch light on and looked outside. He said the car looked OK and the alarm hadn't gone off. So he didn't take any action at that time. But in the morning a significant amount of damage to his car became apparent.

Mr B claimed on his policy. BHII said the car was a total loss. It initially told Mr B it would settle his claim for the car's market value of £11,350.09. It later told him that it was refusing to pay the claim. However, as it had already sold the car's salvage, it paid him the £6,408.17 it had received for that.

Mr B brought his complaint about BHII's handling of the claim to us. One of our investigators looked into it. She didn't think BHII had dealt with Mr B fairly. So she said it should:

- settle the claim for the market value of the car, less the amount BHII had already paid to Mr B for the salvage;
- add simple interest to its settlement;
- pay Mr B £200 compensation for his distress and inconvenience.

Mr B accepted our investigator's assessment of the complaint, BHII didn't so it's 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.

Having done so I'm going to uphold it.

Mr B's claim and complaint has been ongoing for some considerable time. And during that period many detailed points have been raised by both sides. But in this decision I don't intend to address each and every issue raised. Instead I will focus on what I see as being the key outstanding issues following BHII's reply to our investigator's assessment of the complaint.

When and where did Mr B buy the car?

When it was looking into Mr B's claim BHII noted some inconsistencies in relation to who the registered keeper of the car was. And it believed Mr B's answers to its questions indicated that Mr B was lying about his claim.

Mr B had insured the car with BHII in September 2019 but the registration documents showed Mr B hadn't become its registered keeper until January 2020. Mr B said this was because the seller of the car hadn't sent off the V5 (the log book) details to DVLA. Mr B said he'd had to apply for the V5 himself. And when DVLA had sent this to him it had recorded the change of keeper date as the date of application rather than the date he bought it. BHII didn't believe Mr B and thought he was lying about when he'd acquired the car.

I can see why the difference in date on the V5 might have caused BHII to want to know if Mr B had been the registered keeper of the car at the date he took out the policy. Although there's no doubt he was its registered keeper at the date of claim. Similarly there's no doubt that Mr B had paid his premium since September 2019 when he says he bought the car. So it's reasonable to conclude that he had use of the car since then.

Mr B has provided other evidence that he owned the car since September 2019. Some of this would be easy to fabricate, such as a hand-written receipt for the car's sale. But that doesn't mean Mr B didn't actually buy the car when he said he did. Private sales of cars don't usually come with a formal invoice, so a hand-written sale note isn't unusual.

Mr B also had a receipt showing he'd paid to tax the car in September 2019. BHII has suggested that as the taxation receipt doesn't show Mr B's name someone else could have taxed it. But, the car was clearly in Mr B's possession, otherwise he had no reason to insure it (and BHII accepted the premium and the risk for that); he had a receipt showing it had been taxed, and while this didn't give his name if it wasn't his (bearing in mind he was driving the car and had the benefit of it), why should someone else tax the car? So I'm satisfied that this is evidence that Mr B had bought the car as he said he did in September 2019.

Further, while we've been considering the complaint, Mr B's provided letters from DVLA which show that he'd been the car's registered keeper from September 2019 and the car has been taxed until his claim. Mr B's told us that he had problems getting DVLA to answer his queries and he had to write to it on a number of occasions, which is why he couldn't provide that information sooner. I think Mr B's account is entirely plausible. And whether or not he followed the correct DVLA process in having the car registered in his name is immaterial as to whether or not his claim was genuine. So I don't think the V5 discrepancy was any reason for BHII to decline Mr B's claim.

BHII also asked Mr B who he bought his car from. Mr B said he saw an advert online for it and a man, who I'll refer to as Mr A, sold him the car and took Mr B's old car as part exchange. Mr B provided Mr A's address. BHII said that one of its agents had visited the address Mr B had given but the residents of that address said that they didn't know Mr A and he hasn't ever lived there. BHII says this means that Mr B misled it as to who had sold him the car and he hadn't provided an explanation for this.

However, I think there's likely to be a very simple - and perhaps obvious - explanation. For example Mr B, or BHII, might have simply made a mistake with the number of Mr A's house. I think it's worth noting that the address BHII visited had a house number ending in a "2". However, Mr B had kept a section of the V5 for the car he part-exchanged, which gives Mr A's address, but that seems to show the house number ends in a "7" not a "2". So it's possible BHII visited the wrong address. And in any event it's not in doubt that Mr B was the

registered keeper of the car at the time of the incident or that he'd paid a premium to insure it since September 2019. So where the seller of the car lived isn't material to the circumstances of Mr B's claim.

Further, BHII noted that, some five months before the claim, Mr B's car had failed its MOT. BHII said Mr B hadn't provided evidence of the repairs to the "*significant engine damage*" required to get the car through its MOT. BHII said that could call into question the car's valuation, which would be a motive for fraud.

I don't agree. The car failed its MOT because its check engine warning light was on. This is a straightforward MOT fail. But a check engine warning light can appear for numerous reasons and it doesn't automatically mean that a car has suffered *significant engine damage*. Indeed the light can come on because of some fairly minor issues. And Mr B's explained that he took the car to a garage which diagnosed a sensor issue, which was then replaced. That seems an adequate explanation.

Further, the car's MOT history shows it passed its test a couple of weeks after initially failing it. So clearly, at the time of the second test, the engine warning light was no longer showing. In other words the problem had been fixed. So BHII was fully aware that the car had been repaired before the claim. And if it had any doubts about that it could have asked its engineers to examine the car when it took it in to be assessed and decided it was a total loss. There's simply no evidence that the car had suffered some calamitous engine damage that would motivate Mr B to make a fraudulent damage or theft claim.

Mr B's account of the incident

BHII said there have been inconsistencies in Mr B's account of the incident. For example it said that in a phone call with it Mr B said there had been four people involved in the attempted theft. But at other times he's said there were only two individuals involved. I haven't listened to the call in which BHII recorded that Mr B said there were four individuals involved in the theft to see if that's been accurately reported. But assuming that it is I don't find this inconsistency to be damning evidence that Mr B has made up the entire story. The incident took place late at night and in the dark and in those circumstances there might always be scope to have doubts about exactly what's been witnessed. And some inconsistencies in accounts over time is to be expected.

Also, BHII said that information Mr B's wife gave to us about the theft circumstances don't include all the detail that Mr B had referred to. For example things like a thief standing on the car's bonnet or having a crowbar. BHII said this is a "*glaring inconsistency*". But I disagree. We didn't ask Mr B's wife to give us a blow-by-blow account of what happened. We simply asked Mr B for an explanation of why he didn't call the police immediately. And in answering that point his wife explained to us why she didn't want Mr B to go outside. She added that she didn't think the police would be interested in attending. So I'm simply not persuaded that any omissions from anything Mr B's wife said to us is a *glaring inconsistency* that merits Mr B's claim being declined. The fact that Mr B and his wife chose not to call the police at the time of the incident might not have been everyone's choice of action, but I don't find it was so unreasonable as to call into question the circumstances of the claim.

Similarly, BHII said it would have expected Mr B to check for damage to his car immediately but he didn't do so. But BHII seems to be comparing what its staff would do with what Mr B chose to do at the time. And it seems to think any difference in actions from what its own staff would do means that Mr B isn't telling the truth. However, Mr B's explained that he looked out of the window, and, at that time - late at night - the car looked OK and the alarm

hadn't gone off. And his wife didn't want him to go outside in the middle of the night. So he didn't go. I don't find anything untoward about Mr B's version of events.

Equally, BHII has noted that Mr B's wife told us that they'd been through some "*troubling times*" which was why she didn't want him to go outside. BHII has said if it had known about these troubling times it would have investigated those. We haven't explored with Mr B what these troubling times actually were. Mr B has told us about some personal heartaches he and his wife have suffered prior to the claim, which have no bearing whatsoever on the circumstances of it. So I wouldn't have expected him to share that information with BHII. In contrast BHII has said that Mr B's "*withholding of this information*" has denied it the opportunity to investigate the information withheld. I don't know what information BHII thinks Mr B has withheld, or why that might be relevant to his claim. But, as I've said above, I don't think there was any reason for Mr B to share his personal issues with BHII. So I don't agree that he's withheld information.

BHII has said that its concerns are linked to the actual damage to the car. As the thieves have damaged large parts of it. I accept the motivation for the damage to the car might not have been theft but something malicious like vandalism. But Mr B's policy also covers vandalism claims. So if Mr B's car was damaged by vandals rather than thieves BHII would be in the same position of paying Mr B's claim for his damaged car. And the question of why someone would want to damage Mr B's car as they did could only be answered by the people who inflicted the damage. I don't think Mr B can be expected to know what the motivation for that was anymore than BHII can. I certainly don't think that because the nature of the damage isn't consistent with a straightforward attempted theft means that the claim isn't genuine.

It follows that I don't think it was fair for BHII to decline Mr B's claim. So I think it should pay him the car's market value which was £11,350.09, less the amount it paid him for the salvage - £6,408.17, which leaves a balance owing of £4,991.92. It should add simple interest to that sum, at a rate of 8% a year, from the date of claim to the date it pays him.

Selling the salvage and compensation

After BHII decided Mr B's car was a total loss BHII's salvage agents sold it. BHII has acknowledged this shouldn't have happened. The car wasn't theirs to sell, so this wasn't fair. And, as BHII's handling of the complaint has been a source of distress and inconvenience for Mr B, I think it should pay him £200 compensation.

My final decision

For the reasons set out above I uphold this complaint. I require Berkshire Hathaway International Insurance Ltd to:

- Pay Mr B £4,991.92 to settle his claim for the loss of his car. It should add simple interest to that sum at a rate of 8% a year, from the date of claim to the date it pays him¹.
- Pay Mr B £200 compensation for his distress and inconvenience.

¹ If BHII considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr B how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 July 2021.

Joe Scott
Ombudsman