

The complaint

Miss H complains about how Berkshire Hathaway International Insurance Ltd dealt with a claim on her car insurance policy.

What happened

Miss H was involved in an accident in her car so called Berkshire to claim on her policy. As Miss H said she wasn't at fault for the accident Berkshire passed her details to another company (who I'll refer to as P) to provide her with a hire car. Berkshire then dealt with the claim for the damage to Miss H's car under her policy.

Berkshire reviewed Miss H's claim and said her car was what is known as a "total loss". Because of this Berkshire offered her the market value for her car. Miss H wanted to decide whether to repair her car herself, so asked Berkshire to let her know the extent of the damage before accepting the total loss offer. Miss H also received a bill from P saying Miss H needed to pay them £1,529.37 for the hire car as she had been found to be at fault for the accident. Miss H wasn't happy with how Berkshire were dealing with her claim and complained. She said she was being pursued for hire car costs which she didn't agree with. Miss H also said the total loss offer was too low and Berkshire hadn't let her know the extent of the damage to her car. Miss H also complained about Berkshire holding her at fault for the accident.

Berkshire reviewed the complaint and didn't uphold it. They said the agreement for the hire car was between P and Miss H so didn't think it was anything to do with them. They also said from reviewing CCTV footage of the accident they didn't think this was a claim they could defend. Berkshire also said they'd made Miss H a total loss offer and let her know how much they would deduct if she kept the car and said they'd only not paid the settlement as Miss H hadn't provided her bank details or confirmed if she wished to keep her car.

Miss H didn't agree with Berkshire's response to her complaint and referred it here.

Our investigator looked into Miss H's complaint and recommended it be upheld. She found that Berkshire had referred Miss H to P when they should have known Miss H was likely to be held at fault for the accident. She also found that Berkshire had valued Miss H's car fairly but hadn't let her know the extent of the damage. Because of this Miss H hadn't been able to confirm whether she wished to keep the car or not and so had been without a car for several months. To put things right our investigator recommended Berkshire cover the hire car costs along with any late fees or interest charged, let Miss H know the extent of the damage to her car so she can decide whether to keep it and pay the settlement to her. Our investigator also recommended Berkshire pay £350 for the distress and inconvenience caused by the poor claim handling and compensate Miss H £10 a day for the loss of use she'd had due to not having her car or the total loss settlement.

Berkshire didn't agree. They said the hire agreement was between P and Miss H and that they didn't think they were responsible for Miss H using P. They also said they'd only not paid the settlement as Miss H hadn't provided her bank details so didn't think they'd delayed the claim.

I issued a provisional decision on this complaint on 28 November 2022 where I said:

“For ease of reading, I’ve split Miss H’s complaints into different sections and will deal with each one separately.

Referral to P

Berkshire have provided a form which shows the information shared with P who provided Miss H’s hire car. The reason for the referral is because Miss H doesn’t think she was at fault for the accident. However, from looking at her testimony which says she’d overtaken another car and then a bus collided with her, while pulling out of a bus stop, after she’d pulled back into her lane, I’m not persuaded Berkshire acted fairly by relying on Miss H’s testimony and passing her details to P. I say that because Berkshire deal with liability disputes in motor insurance claims and ought to reasonably have known the third party would likely dispute liability in this situation.

I’ve also noted that Miss H had what would be described as a “small” car, her policy also provided a courtesy car, which would be a small car. As Miss H’s policy provided a courtesy car, I’m also not persuaded there was a need for Berkshire to refer Miss H for a hire car. The courtesy car is also provided under her policy and therefore not something Miss H would have been at risk of needing to pay for, if liability was disputed. There was a risk Miss H could be held liable for the hire car charges and Berkshire should have let Miss H know this along with the fact she was entitled to a courtesy car under her policy, so she could make an informed choice on whether to use a hire car. Miss H has said if she’d known she had a courtesy car on her policy then she would have used it. And therefore, wouldn’t be held liable for the hire car costs.

I’ve therefore looked at how to put the poor referral right. Because of Berkshire referring Miss H to P she is now being chased for £1,529.37 for credit hire costs. These are costs Miss H would never have incurred but for Berkshire’s poor referral. Therefore, the fair and reasonable outcome is for Berkshire to pay the credit hire costs, plus any late fees and interest.

Miss H has said she’s been chased for the outstanding hire car costs and it’s been referred to debt collectors and she’s been threatened with legal action. Miss H has also explained how this has impacted her and the effect it’s had on her mental health. She’s explained she’s been signed off work due to the impact of this and has provided medical records to support this. I can see it’s been an extremely stressful and worrying time for her and. As I’m persuaded, she’s only incurred these costs due to Berkshire’s failings, I’m persuaded Berkshire should pay Miss H £350 to compensate her for this unnecessary additional distress and inconvenience.

Liability decision

The terms and conditions of Miss H’s policy, like most policies we see, give Berkshire the right to take over the defence or settlement of any claim, as it sees fit. That means it might make a decision Miss H disagrees with and not try to recover its outlay or settle a claim from the third party or their insurer. But we’d look at whether Berkshire made a reasonable decision in doing this based on the evidence it had and the circumstances of the case.

Berkshire has reviewed CCTV footage of the incident which shows Miss H overtook another car and then when she was completing her manoeuvre collided with a bus which was pulling out from a bus stop. Because of this footage Berkshire said it clearly shows Miss H is at fault for the accident and therefore isn’t one they could defend in court. I’ve reviewed the CCTV

footage and I'm satisfied that Berkshire has acted fairly and reasonably when deciding to accept liability for the accident.

Total loss settlement

The terms and conditions of Miss H's policy say that if Berkshire deem her car a total loss, it will pay her the market value. It defines market value as "the cost of replacing your vehicle with another of the same make and model and of a similar age and condition at the time of the accident or loss."

Our service doesn't value cars. Instead we check to see that the insurer's valuation is fair and reasonable and in line with the terms and conditions of the policy. To do this we tend to use relevant trade guides. I usually find these persuasive as they're based on nationwide research of sales prices.

Berkshire has offered £2,881 as the market value for Miss H's car, minus the policy excess. The three trade guides used valued Miss H's car between £2,740 and £3,225. As Berkshire's offer is within the range of the guides, I'm satisfied it's a fair and reasonable valuation.

Before making a decision to accept Berkshire's offer Miss H asked for the details of the damage to her car so she could decide whether to keep it and have it repaired herself. Berkshire confirmed the salvage value would be £1,296.45 and that this would be deducted from her total loss settlement. However, they didn't confirm what the damage was so Miss H could make a decision on whether to retain the salvage or not. The impact of Berkshire not letting Miss H know this is that she then couldn't decide on whether to accept the total loss offer. Because of this Miss H has been without a car since the accident, Berkshire has now let Miss H know the cost to repair her car. She's said given how long it's been in storage and the cost to repair the damage from the accident she's now decided she doesn't want to keep the salvage.

Miss H explained as she hadn't had her car or the settlement to her claim for several months it meant she'd had to cycle places but then couldn't afford to service her bike. She's also not been able to get around to do her shopping easily, get to work, attend fitness classes etc. Miss H said she'd got taxis where needed but has tried to keep her costs to a minimum. I'm satisfied that Berkshire has caused Miss H loss of use of her car or a replacement one by not giving her the information to decide on whether to accept their offer. The fair and reasonable outcome is for Berkshire to compensate Miss H for this loss of use at a rate of £10 per day, calculated from the date she returned the hire car until the date to total loss settlement is paid."

Miss H responded and asked whether 8% interest would be applied to the value of her car. She also requested to be reimbursed the full cost of the daily hire charge and said she requested to return the hire car as soon as she knew she could be liable for the costs. Miss H also questioned whether the number of days between 29 November 2021, the date she said she found out she might have to pay the hire car and the date the settlement was paid, 3 August 2022, was 247 days.

Berkshire responded and didn't accept my provisional decision. They said they only hadn't paid the settlement as Miss H hadn't provided her bank details and said they'd asked for them numerous times. They also said Miss H hadn't provided evidence of the hire car costs and that they also weren't covered by the policy and neither was loss of use. Berkshire agreed to the distress and inconvenience award but said it wasn't fair to cover costs which could have been avoided had Miss H provided her bank details.

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 reviewed Berkshire's comments and they've not persuaded me to change my decision. I say this because while I agree Berkshire asked for Miss H's bank details, she also responded saying she wanted to know the extent of the damage before accepting so she could make the decision on whether to accept the offer. And as Berkshire didn't provide this, I'm satisfied the delay in paying the settlement is due to Berkshire not responding to Miss H's request which would have allowed her to decide on whether to accept the offer. I'm therefore satisfied the fair and reasonable outcome is for Berkshire to compensate her for this delay by paying her £10 per day for her loss of use, as explained above and in my provisional decision.

Regarding evidence of the hire car costs, Miss H has provided that to this service and I'm therefore satisfied that is the amount she's been pursued for. As I'm directing Berkshire to pay these costs the evidence of the costs will be sent to Berkshire so it can arrange payment with the hire car provider along with any late fees and interest. I understand these costs aren't covered by the policy, but as explained above and in my provisional decision I'm satisfied it's fair and reasonable for Berkshire to cover them as Miss H wouldn't have been chased for these costs if it wasn't for Berkshire's failings.

I've also considered Miss H's response; I understand the total loss settlement has now been paid and therefore she has this money. In my decision I'm satisfied the fair and reasonable outcome is for Berkshire to cover her loss of use due to not having the money. So while I understand there was a delay in Miss H receiving the settlement it wouldn't be fair to tell Berkshire to also pay 8% on the total loss amount as well as loss of use in this case.

In my decision I'm also telling Berkshire to cover the hire car costs and so the full daily charges and costs will be covered, along with any late fees and interest. Finally for the number of days between when the hire car was returned and settlement made, if the dates Miss H has said are correct then it does appear to be 247 days as Miss H has said. However, as I've not been provided with anything to show these dates are correct, I'm unable to say Berkshire needs to pay 247 days loss of use. Therefore, I'm not inclined to depart from the findings in my provisional decision.

My final decision

For the reasons explained above and in my provisional decision, my final decision is that I uphold this complaint. I require Berkshire Hathaway International Insurance Ltd to:

- Pay Miss H's hire car costs plus any late fees or interest she's incurred due to not paying them on time
- Pay Miss H the market value of £2,881, minus the policy excess. If not already done so
- Pay Miss H £10 per day for loss of use, calculated from the date she returned the hire car until the date of settlement of her claim
- Pay Miss H £350 for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 20 January 2023.

Alex Newman

Ombudsman