

The complaint

Miss R complains that Berkshire Hathaway International Insurance Ltd unfairly rejected a claim she made on her motor insurance policy.

What happened

Miss R's car was stolen from where it was parked on the road outside her house. Miss R notified Berkshire of the theft. The car was recovered, but had been damaged. Miss R made a claim on her motor insurance policy.

Berkshire declined Miss R's claim. It referred to paragraph 12.6 of her insurance policy:

"Taking care of your car

You or any person in charge of your car must take reasonable precautions to:

- *Maintain your car in an efficient and roadworthy condition and ensure it is safe to drive; and*
- *Protect your car and its contents from damage or loss."*

Berkshire said that since it was apparent that the door to Miss R's house hadn't been locked when the keys were taken, she'd failed in her responsibility under the policy to protect the car from damage or loss.

One of our investigators considered Miss R's complaint and didn't think it should be upheld. He said, in summary, that given that Miss R's front door had been unlocked, he thought it was reasonable of Berkshire to conclude that she hadn't taken reasonable precautions to protect the car. So he didn't think it had been unfair to decline Miss R's claim.

Miss R didn't agree with the investigator's view, so the complaint was passed to me.

My provisional findings

After considering all the evidence, I issued a provisional decision on this complaint to Miss R and to Berkshire on 29 November 2022. I explained that based on what I'd seen so far, I thought Miss R's complaint should be upheld. I said:

"Berkshire turned down Miss R's claim saying she didn't comply with the policy requirement to take all reasonable steps to protect her car from loss or damage.

Our approach in cases like this is that Berkshire would need to show that Miss R acted "recklessly" in order for it to be fair and reasonable to turn down her claim for this reason. This is in line with the leading case in this area, the Court of Appeal's decision in Sofi v Prudential Assurance. The test to decide whether someone has acted recklessly has two parts:

- First, the insurer must show that the insured recognised that there was a risk their car might be stolen;*
- Second, the insurer must show that, having recognised the risk, the insured took no action to prevent their car being stolen – or took actions which they knew were inadequate.*

*The test isn't what an average or reasonable consumer would have thought or done, but what the **individual** consumer thought or did at the time.*

So if Berkshire wants to rely on the policy term it's pointed to, it's not enough for it to show that Miss R was careless. Instead, it needs to show that she recognised the risk of her car being stolen. Then it needs to show that she ignored that risk, or that she took steps to minimise the risk which she knew perfectly well were unlikely to be enough.

It isn't in dispute that the front door to Miss R's house wasn't locked when a thief entered and stole her car key. But in my view, that doesn't automatically imply that she was reckless. Having thought carefully about what Miss R has said, both to us and to Berkshire, I think that she recognised that there was a general risk of car theft if sensible precautions weren't taken to prevent it. But I'm satisfied that she took what she regarded as sufficient action to prevent this. She left the car locked, with the windows closed. And she kept the key in her house, away from the car. I think she thought this was enough. It doesn't matter that she might have done things differently with the benefit of hindsight.

I acknowledge that Berkshire has commented that Miss R's account of what happened hasn't been fully consistent. It says that she originally told it the front door was unlocked. But it says she later told it that she'd locked the door, but that her daughter had unlocked it to let a pet out and there was some uncertainty as to whether she locked it again afterwards. She said her daughter had also popped out later in the evening, and couldn't remember whether she'd locked the door as soon as she returned, or only later when she went to bed.

But I think that Miss R was simply trying to piece together the sequence of events in what was a stressful situation, and that's the most likely explanation for any apparent inconsistency.

As it is, I don't need to know the precise sequence of events to make a decision on this complaint. I don't need to decide who failed to lock the door, or when – or for how long- it was left unlocked. The important thing here is that Miss R thought she'd done enough to protect the car by leaving it locked with its windows closed and keeping the key in her house. There was no requirement in the policy to keep her house locked at all times, and Miss R didn't think it was necessary to go that far.

Given that I don't think that Berkshire has shown that Miss R was reckless in failing to protect her car from loss, I don't consider that it was fair of it to rely on the policy term to reject her claim."

I said that Berkshire should put things right by doing as I've set out under the heading "Putting things right" below.

Further submissions

Miss R has told us she's happy with my provisional decision and has nothing further to add. Berkshire hasn't responded to my provisional decision, and the time for doing so has now expired.

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 can see no reason to depart from the findings I set out in my provisional decision.

Putting things right

To put things right, Berkshire should:

- Settle Miss R's claim in accordance with the remaining terms and conditions of the policy;
- If the settlement of Miss R's claim involves a financial payment to Miss R, pay her interest on the amount paid at a rate of 8% simple per year from the date of the theft to the date of payment*; and
- Pay Miss R £150 to reflect the distress and inconvenience she's experienced.

*If Berkshire considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Miss R how much it's taken off. And it should give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My decision is that I uphold this complaint. I require Berkshire Hathaway International Insurance Ltd to put things right by doing as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 3 February 2023.

Juliet Collins
Ombudsman