

## **The complaint**

Mr K complains that Advantage Insurance Company Limited (Advantage) declined his claim for the theft of his car under his motor insurance policy.

## **What happened**

Mr K's car was stolen shortly after a prospective buyer had viewed it. This happened in September 2021. He reported the theft to the police and contacted Advantage to make a claim under his policy.

After interviewing Mr K and analysing his two key fobs, Advantage declined his claim in November 2021. It says one of the key fobs wasn't programmed to the car and so couldn't be used to open it or to start the engine. It thought the car was likely stolen by the prospective buyer who had swapped the real key with another one without Mr K noticing.

Advantage relied on a policy exclusion that says it doesn't cover loss or damage if someone claiming to be a buyer or agent takes possession of a car deceitfully.

Mr K didn't think this was fair. He appealed, but Advantage didn't change its decision. It made its decision in January 2022, but Mr K wasn't made aware of this until May when he contacted Advantage for an update. It sent Mr K a cheque for £60 to acknowledge the delay in informing him of the outcome of his appeal.

Mr K thought Advantage should accept his claim and asked our service to consider the matter. Our investigator upheld his complaint. He didn't think Advantage had applied its exclusion clause fairly. He says the terms are specific and refer to taking the car by deceit. He didn't think possession of the car was taken by deceit, but rather it was the keys that had been taken by deceit.

Our investigator says the theft of the car took place after this. So, it wasn't fair for Advantage to rely on this exclusion, and it should reconsider the claim based on the remaining policy terms.

Advantage didn't agree. It says the thieves took possession of the car deceitfully by swapping the keys. It says Mr K held no information about the prospective buyer but handed over the keys and allowed them to view the vehicle with him standing outside. Because it didn't agree with our investigator's decision, Advantage asked for an ombudsman to consider Mr K's complaint.

It has 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've decided to uphold Mr K's complaint. Let me explain.

In its decline decision Advantage refers to the following exclusion from its policy terms:

*"You're not covered for:*

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

I think the exclusion is clearly worded. If Advantage can show possession of Mr K's car was taken deceitfully by a prospective buyer, then on the face of it the claim can reasonably be declined.

I've read the report Advantage obtained from its forensic key specialist. The expert examined both key fobs that Mr K supplied. The report says Mr K was supplied with two keys when he bought the car. It says the keys were last used by the prospective buyer who was sat in the vehicle with the engine running whilst their friend was looking under the bonnet.

In the report the expert says one of the keys is a genuine key fob and shows signs of wear and tear, as would be expected. He says the remote-control function works correctly and the immobiliser data stored within the key was accessed and read. The expert couldn't confirm if the key was programmed to Mr K's vehicle. He suggested if this information was needed the car manufacturer should be contacted.

The report says the other key is new and non-genuine. It isn't coded to any vehicle meaning it's not possible for the key to work with any vehicle. The expert says the key blade is uncut and also wouldn't operate the doors on any vehicle. He concludes that as one of the keys isn't original the prospective buyer may have swapped this with the genuine key fob when Mr K wasn't looking.

I note Advantage's comment that Mr K hadn't reported an issue with one of his keys not working. It thought it was likely the prospective buyer had swapped one of the keys and had returned sometime later to take the car using an original key.

I've read the records Advantage has provided to understand what Mr K says happened when the prospective buyer came to view his car. Mr K says he started the engine with one of the keys and he had the other one in his pocket. The prospective buyer was sat in the driver's seat. He says it was the prospective buyer who turned off the engine and handed him the key back. Mr K was outside the car during this time. After the buyer had finished his inspection, Mr K says he walked back to his car, unlocked it and showed the prospective buyer the V5 document. He then locked the car again.

We asked Mr K for some more details of what happened during the inspection. He says there was another man, he refers to as the prospective buyer's technician, who was stood at the front of the car. The buyer opened the bonnet and the technician asked Mr K questions about a small oil leak. Mr K says he was outside the car and was answering questions to both of the men. This required him to move between them in order to answer their queries. Mr K says he was outside the car as the technician had wanted to point out the oil leak in the engine. He says all of this took about five minutes and the driver's side door was open throughout.

From the records Mr K was offered the asking price for his car. He refused to accept a part cash payment and directed the buyer to a local bank to transfer the monies in full to his account. After two hours Mr K rang the phone number he had been given by the prospective buyer, but it wasn't in service. He then went to check on the car and found it had been taken. He phoned the police at this point.

I've thought carefully about whether it's fair and reasonable for Advantage to rely on the exclusion it has to decline Mr K's claim for the theft of his car. I don't think it is. In part this is because of the wording used in the exclusion it relied on.

The terms specifically exclude the claim if someone claiming to be a buyer, "*takes possession of your car deceitfully*". According to Advantage, possession of the key was taken deceitfully. Not the car. I note its comments that the deceitful taking of the keys was undertaken by the prospective buyer in order to take the car. But it still remains that it was the key that was taken deceitfully not the car.

Our established approach when considering whether exclusions such as this have been used fairly, is to consider the intention behind the term. We think that this is to exclude claims where the policyholder hasn't taken reasonable steps to protect their vehicle. In its submissions to our service Advantage states this is what happened here, as in its view Mr K failed to safeguard his vehicle. But having considered his testimony I don't think this is a fair conclusion.

Mr K was next to the car at all times whilst the prospective buyer was sat in the driver's seat with the door open. Mr K started the engine. The bonnet was open, and the other man was outside of the car apparently inspecting the engine bay. Mr K says he was moving between both men answering questions in close proximity to the car. I think Mr K's positioning during this inspection reasonably prevented the car from being driven away. Particularly as one of the men was outside of the vehicle and the bonnet was open. He didn't leave the men unattended and was in a position to intervene if needed. I think this shows Mr K behaved reasonably to safeguard his car.

Mr K says he locked his car. But then returned to it to show the prospective buyer the V5 document. He then locked the car again. Based on the key expert's report one of the keys wouldn't have worked, which is the one the prospective buyer handed back. I've thought about what this means.

Mr K says he had one key in his pocket and the other was handed back to him by the prospective buyer after the inspection. This means he had a working key on his person when he locked the car and then when he returned to it to view the V5 document. I have no reason to doubt Mr K's testimony that he locked and later unlocked the car. The evidence doesn't contradict what he says happened.

Mr K says he didn't accept a partial cash payment and insisted the money was provided by a bank transfer. He didn't relinquish possession of his car, and from his testimony didn't intend to, until he had confirmation that the transfer was complete. Again, this shows Mr K was mindful of a deception occurring and behaved reasonably to ensure his car was safeguarded.

Based on the evidence it appears likely that the prospective buyer switched a genuine key with a false one. But I don't think it's been shown that Mr K behaved irresponsibly or that he failed to reasonably safeguard his car. Because of this I don't think Advantage has treated Mr K fairly. Because of this it should reconsider his claim, under the remaining policy terms, without relying on the deception exclusion.

### **My final decision**

My final decision is that I uphold Mr K's complaint. Advantage Insurance Company Limited should:

- reconsider Mr K's claim without relying on the deception exclusion, in line with the

remaining terms of his policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 22 February 2023.

Mike Waldron  
**Ombudsman**