

The complaint

Mr C complains Advantage Insurance Company Limited unfairly declined his motor insurance claim.

What happened

In November 2022 Mr C made a claim, for the theft of his car, against his Advantage motor insurance policy. He had taken his car to a couple of local garages for non-accident related repairs. The second garage said it was unable to make the repair, but found, on an internet auction site, details of an outfit advertising the specialist work required. I refer to this outfit as X. The garage spoke to X and told Mr C it seemed suitable for the work. Mr C called X himself. They agreed a price, he paid a deposit and the car was collected.

After a couple of months there had been no progress with the car. Mr C told X he wanted to collect it. After an unsuccessful visit to X's site he contacted local police. They told him X is fraudulent outfit that doesn't return cars to their owners.

Advantage declined the claim. It's said Mr C failed to take reasonable care to protect the car from loss or damage. It explained the circumstances surrounding the theft of the car met an exclusion in the policy – *'you're not covered for loss or damage if someone claiming to be a buyer or agent takes possession of your car deceitfully'*.

In response to a complaint, Advantage continued to refuse to pay the claim. It referred to the exclusion again – saying a 'pretend agent' of a third party had deceitfully obtained possession of Mr C's car. Mr C wasn't satisfied so came to this service. To resolve his complaint he wants Advantage to settle his claim.

Our investigator considered the complaint. She didn't agree Mr C had failed to take reasonable care of the car. She felt it unfair for Advantage to refer to the exclusion to decline the claim. She said whilst there many have been deception involved the perpetrator hadn't claimed to be a buyer or agent. So she recommended Advantage pay the claim, plus simple interest at 8%. She also said it should give Mr C £200 compensation.

Mr C accepted the outcome, but Advantage didn't. It said the exclusion should apply as the thief was an agent of X – and Mr C had failed to protect the car from loss or damage. So the complaint was 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.

Mr C's policy covers his car against loss or damage caused by theft. Advantage accepts a theft occurred – for example in its claim decline letter it says, *'We take the view that the circumstances surrounding the theft of your car...'*. So I don't need to consider if what happened should be treated as a theft for the purposes of the claim. So I've considered if

Advantage has shown its fair and reasonable for it to decline the claim based on the exclusion set out above, and/or the reasonable care term.

Advantage's made various attempts to fit the circumstances to the exclusion. For example it's said various individuals, including the recovery driver collecting the car and someone from X that communicated with Mr C, were an agent of X – or were 'claiming' to be an agent.

I've considered these but ultimately, I don't feel the exclusion fits with the circumstances. It talks of someone, taking possession deceitfully, who is 'claiming' to be a 'buyer' or 'agent'. In my opinion the exclusion is intended to apply to sale situations – i.e. where someone pretends to be a buyer or an agent that will buy the car – or sell it on behalf of Mr C. So agent is intended to mean some form of sales agent. As far as I'm aware, X didn't claim to be a 'buyer' or 'seller'. There wasn't any discussion of the potential sale of Mr C's car to X via X as an agent.

I don't accept the exclusion was intended to cover, as Advantage has interpreted it, the involvement of any conceivable form of 'agent' (i.e. any person that acts on behalf of another person or group). In any event I'm not persuaded anyone involved in the theft was 'claiming to be an agent'. The person Mr C spoke to, at X, wasn't 'claiming to be an agent' of X – he was, as far as I'm aware, X itself. So it's not fair or reasonable for Advantage to rely on this exclusion to decline the claim.

Advantage has also referred to a 'reasonable care' term to decline the claim – '*you or any person in charge of your Car, must protect it from damage and loss*'. I've considered the relevant case law (Sofi v Prudential) – it's for Advantage to show Mr C acted in a way that amounted to recklessness. That being that he recognised a risk but took no measures at all or measures he knew to be inadequate to avoid it.

The payment of a deposit to a personal account is perhaps unusual. But Mr C's own garage had found X, informing him it seemed suitable. He'd spoken to X on the phone himself. So he had reason to be reassured about X. There's nothing to suggest X and Mr C's garage are connected in anyway either. There's always a risk involved in handing possession of a valuable item to someone. But overall I'm not persuaded Mr C was aware of a particularly heightened risk of his car being stolen by X and then failed to take measures he knew to be inadequate. So Advantage hasn't persuaded me Mr C acted recklessly.

So it's not fair or reasonable for Advantage to rely on the reasonable care term to decline the claim either. I'm not aware of any further reasons for Advantage to decline the claim, so it should settle the claim in line with the policy terms. As Mr C's been unfairly without the funds, Advantage should add simple interest, at 8%, from the date of decline to the date of settlement.

I agree with the investigator that the decline has caused Mr C unnecessary distress and inconvenience. So to recognise that Advantage will need to pay him £200 compensation.

My final decision

For the reasons given above, Advantage Insurance Company Limited is required to:

- settle Mr C's claim in line with the policy terms – adding simple interest, at 8%, from the date of the decline to the date of settlement* and
- pay him £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 26 April 2023.

Daniel Martin
Ombudsman