

The complaint

Miss M complains that Berkshire Hathaway International Insurance Limited (Berkshire) unfairly declined her claim following the theft of her car, under her motor insurance policy.

What happened

In March 2022 Miss M returned from holiday to find that her car wasn't parked where she had left it. She contacted Berkshire to make a claim for the theft of her vehicle.

Berkshire declined the claim. It says Miss M failed to notify it of changes to the information she provided when her policy was first taken out. It says there are inconsistencies within the statements it obtained from her and her partner. Berkshire also says it had been unable to ascertain the whereabouts of a missing key for Miss M's car. Because of this it says it's unable to indemnify Miss M for her loss.

Miss M says Berkshire's response is unfair. She referred the matter to our service, but our investigator didn't uphold her complaint. He says Berkshire had assessed the claim fairly relying on the opinion of expert investigators. He thought its decision to decline the claim was reasonable and in line with its policy terms.

Miss M disagreed and asked that her complaint be considered by an ombudsman. It has been passed to me to decide.

I issued a provisional decision in January 2023 explaining that I was intending to uphold Miss M's complaint. Here's what I said:

provisional findings

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 my intention is to uphold this complaint. Let me explain.

Berkshire has relied on several points in its decline decision. These are largely based on the investigation reports provided by the agent it used to assess the claim. This involved interviews with both Miss M and later with her partner. I've read the reports alongside the letters Berkshire sent to Miss M, to understand the reasons for its decline decision.

In its decline letter Berkshire says Miss M's declared annual mileage is 15,000 miles. It points to mileage shown on historical MOT tests that reveal a higher mileage than this was covered between August 2019 and August 2020. And in the following policy year up to August 2021. I can see from the records the mileage was around 26,000 and 20,000 respectively for these periods.

This shows Miss M had covered more than 15,000 miles in previous years. But the theft was reported in March 2022. I can't see that Berkshire has shown Miss M covered more than 15,000 miles in the policy year relevant to her claim.

In its decline letter Berkshire points to Miss M's comments, from a signed statement on 1 April 2022, that she commuted to one place of work every day. It says, "you have volunteered that you [sic] traveling to a place of work which would be classed as commuting. Also, you have failed to declare an increased annual mileage".

As discussed, I can't see that Berkshire has shown an increased annual mileage for the relevant policy year. Looking at Miss M's policy certificate, applicable at the time of her claim, it says commuting and business use are permitted. Based on this information I can't see that Miss M was using her car contrary to the terms of her policy. So, I don't think this gives a reason to decline the claim.

Berkshire's decline letter refers to Miss M's statement that she received two keys when she bought the car. Also, that one key was broken and is no longer in her possession. I can see from the investigation report that Miss M told Berkshire she had snapped the key when opening a tin of pain. This happened not long after she had bought the vehicle. I understand from her submissions to our service that this was around four years ago. Miss M told Berkshire she no longer has the key and didn't obtain a replacement.

Berkshire says not being able to confirm the whereabouts of the missing key is a factor in its decline decision.

I've thought about this point. Miss M told Berkshire's investigator when first interviewed that the key was snapped some time ago and she no longer had it. Her position on this didn't change. I note Berkshire's investigator raised concerns that this account may not be true and that the key could've been left in or around the car. Berkshire refers to the following policy exclusion in relation to this point:

"Loss of or damage to your car when it is unoccupied unless all windows, doors and roof openings are closed and locked and all keys needed to lock the car are in your possession or the person authorised to use your car."

There is no reason to consider the car was left unsecured. Miss M confirms in her statement that it was locked, as she heard the locking mechanism engage. Miss M gave a plausible explanation for why there is no spare key. I can understand why Berkshire had wanted to query this point, but I don't think it's been shown that Miss M had left a key in or around the car that would have assisted in it being stolen.

The records also show that Miss M recalls finding a door handle from her car at the location she had left it. Berkshire's investigator says Miss M's model of car is prone to theft and is commonly stolen. It also says the presence of the door handle potentially suggests that access had been gained by force. Berkshire's investigation report says:

"We are aware that this model of vehicle can also be stolen, without a key, via access to the OBD port once forced entry is used to gain access to the vehicle."

Based on this information, this type of car is targeted by thieves and can be driven away once access is gained by force. The handle Miss M says she found at the scene suggests this is how her car was taken. I acknowledge the point Berkshire has made about the key, but I don't think it's shown sufficient reason to decline this claim based on this point.

Berkshire says it isn't clear why Miss M parked her car 0.8 miles from her partner's house. This was prior to going on holiday with her partner and two children. It says there is unrestricted parking on residential streets close to her partner's address. It also says the area where Miss M left her car is less secure and has limited spaces for parking. It says

employees at a local garage, also park on the same stretch of road when its car park is full. Suggesting there wouldn't have been a space for Miss M to park in. Berkshire's investigator asked the garage manager and employees if they had seen Miss M's car parked in the vicinity. It says they hadn't and there was no CCTV footage to look at.

Berkshire says Miss M's car is a distinctive model. It says the garage employees told it they would've noticed the car based on its trim markings.

Miss M says that residents don't like other vehicles being parked in the locality, which is why she parked where she did. She says neighbours have left notes on her partner's windscreen relating to this point previously. In her statement to Berkshire's investigator, she explained that she had parked in this area adjacent to the garage before. Miss M reiterates this in her submissions to our service saying that she has left her car in this area overnight previously.

I can see that Miss M's partner also commented, in her statement, that local residents are upset by other vehicles parking on the street due to the limited available parking. And I note Miss M's comments that when she returned to where her car had been parked after her holiday, there was no other car occupying the now vacant space. She says this shows spaces are available for parking in this area.

I also note Berkshire's view that the area where Miss M parked is more of an industrial area. I think this is reasonably supported by the photographs supplied.

I've thought about Berkshire's point that there is unrestricted parking available on the streets closer to Miss M's partner's house. But I can understand Miss M's reasoning for not wanting to leave her car on a street, for an extended period, where this might upset the local residents close to her partner's home. I can understand Berkshire's concern that the area she chose to park in was potentially less secure than other on street parking. But I don't think it's shown that Miss M acted contrary to her policy terms when deciding to park where she did. Miss M confirms the car was locked as required by the conditions of her cover. I'm also not persuaded that Berkshire has shown it would've been unlikely for Miss M to have found a parking space where she says she did.

It isn't known when Miss M's car was stolen. Only that it wasn't there when she returned from holiday. It could be that the car was stolen shortly after it was parked. So, although I acknowledge Berkshire's point that the garage employees don't recall seeing Miss M's car, this could conceivably be because it wasn't there long.

In Berkshire's investigation report, concerns were raised that Miss M could've parked on her partner's driveway. Alternatively, that she could've used her car to drive to the holiday destination or parked her car at her home.

Miss M says her partner lives at her father's address. And that her partner parks her car across the entrance to the driveway. She says this wasn't an option for her, as access would be needed to the driveway by her partner's father. Miss M also says they went on holiday in her partner's car as Miss M's car only has two doors not four. She says this will have caused issues when travelling with two children. Miss M explains that she drove to where her partner lives, before going on holiday, as she lives some distance away from her home.

I've thought about Miss M's statement and comments, alongside the concerns raised by Berkshire. I can understand why the business has highlighted these issues, and why it wanted to query certain points with Miss M. But having considered this, I'm not persuaded that it's shown the account of where she parked her car, and the reasons for this, are implausible or reason to decline her claim.

I note that when asked how she got from where she parked to her partner's house, Miss M told Berkshire her partner had picked her up. When interviewing her partner, Berkshire was told Miss M had walked to her partner's house. Clearly there is a discrepancy here. I note Miss M later told Berkshire her partner could be right about this. In her submission to our service, she refers to a disorder that can impact her memory, particularly around times of stress. She says the theft of her car was stressful and this could explain why she said she had been picked up.

I've thought about this point carefully. Berkshire refers to the following policy term in its decline letter:

"You must always answer our questions honestly and provide true and accurate information."

There is a discrepancy between Miss M's recollection and her partner's account of whether she walked to the house or was picked up. Miss M may have been confused on this point and incorrectly said she was picked up. But I don't think this is reason alone for Berkshire to determine that Miss M's account is unreliable.

I note Miss M raised concerns with the standard of service she received, and the time taken for Berkshire to handle her claim.

I think it's reasonable to expect Berkshire to be able to investigate and validate a claim. There were issues with Miss M's account that it reasonably wanted to verify further. This took some time due to the need to instruct its agent to carry out interviews, visit the theft site and provide a report. However, this did take a number of months to complete, which I think could reasonably have happened more quickly. Miss M also refers to requests for updates that weren't acted upon. I can see from Berkshire's complaint response that it accepts it didn't provide the contact requested. It says the service Miss M received wasn't fair and that it has provided feedback to the team involved.

Based on the evidence provided, I think Berkshire's assessment of the standard of service Miss M received is fair. I also think she should reasonably have expected a swifter conclusion to her claim. Miss M has also been without her car or a settlement payment to buy another for a significant period. This has caused Miss M inconvenience and distress. In these circumstances I think Berkshire should acknowledge this by paying Miss M compensation.

In summary I don't think Berkshire acted fairly in declining Miss M's claim for the reasons it gave. It should now settle her claim in line with the remaining policy terms without relying on the policy exclusions set out in its decline decision. Any settlement payment should include 8% simple interest from the date of the loss. Because of issues highlighted here, Berkshire should also pay Miss M £350 compensation.

I said I was intending to uphold Miss M's complaint and Berkshire should:

- settle Miss M's claim in line with the remaining policy terms without relying on the exclusions used in its decline decision and pay 8% simple interest from the date of the loss until the claim is paid on any settlement amount. *If Berkshire considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss M how much it's taken off. It should also give Miss M a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate; and
- pay Miss M £350 compensation for the inconvenience and distress it caused her.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Berkshire didn't respond with any further comments or information.

Miss M responded to say she has GAP insurance in place and has recently received a diagnosis for a health condition she suffers from. But Miss M's response is that she accepts my decision.

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.

As neither party has made any further submissions (requiring further consideration) or provided further evidence for me to consider, I see no reason to change my provisional findings.

So, my final decision is the same as my provisional decision and for the same reasons.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that Berkshire Hathaway International Insurance Ltd should:

- settle Miss M's claim in line with the remaining policy terms without relying on the exclusions used in its decline decision and pay 8% simple interest from the date of the loss until the claim is paid on any settlement amount. *If Berkshire considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss M how much it's taken off. It should also give Miss M a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate; and
- pay Miss M £350 compensation for the inconvenience and distress it caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 6 April 2023.

Mike Waldron
Ombudsman