

## **The complaint**

Miss B complains about a declined insurance claim after she made a claim on her motor insurance policy with Berkshire Hathaway International Insurance Ltd ('Berkshire').

## **What happened**

The background to this complaint is well known to both Miss B and Berkshire. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

Miss B had a motor insurance policy with Berkshire. Miss B says her car was taken without her permission and involved in an accident. She then registered a claim with Berkshire. They had some concerns about the claim and Miss B's account of what had happened. The car was classified as a total loss and moved to a salvage yard as no repairs had been authorised. Berkshire later said the car was disposed of – in error.

Miss B complained to Berkshire about the claim decline, the disposal of her car and the non-return of personal items from the car. Berkshire offered Miss B £100 in recognition of the car being disposed of in error and paid her the salvage value.

Our Investigator considered the complaint and recommended that it not be upheld. Miss B didn't accept their recommendations, so the complaint was referred to me for a decision. I sent both parties a copy of my provisional, intended findings – outlining that I was intending to uphold the complaint.

As the deadline for both parties to respond has now passed, I've now considered the complaint for a final 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.

Although a number of issues have been raised, this decision only addresses those issues I consider to be materially relevant to this complaint. This isn't meant as a discourtesy to either party – it simply reflects the informal nature of our Service. Where there's an alternative version of events between both parties, I've to reach my decision based on what I think is more likely than not – based on the available evidence.

It's important to be clear that my role when considering this complaint doesn't extend to determining what has actually happened at the time that the car was taken and involved in an accident.

Berkshire shared their concerns with Miss B. In summary, their concerns were based around her version of events being inconsistent, differing accounts being presented to the police than when making this claim and important information not being shared with them.

As outlined above, I'm not deciding here what's actually happened. Instead, I'm considering if Berkshire has fairly and reasonably considered all of the evidence before reaching the

position (declining the claim for fraud) they've taken here. Although I won't comment on every part of the extensive evidence, I have carefully considered everything.

### *Responses to the most recent provisional decision*

Both parties responded to the decision. Berkshire said they'd agree to reconsider the claim in line with the remaining policy terms. Miss B responded to say that she was unhappy with the removal of 8% simple interest. As explained in the provisional decision, although I'm directing Berkshire to reconsider the claim, I'm not pre-empting the outcome of the claim – so I've removed the part of the direction that referred to paying 8% simple interest on any successful claim.

As previously, my key findings remain the same and I've included them below:

Having reviewed the evidence, I agree with Berkshire that there are inconsistencies in Miss B's accounts of what happened shortly before and around the time of the incident. I've highlighted some examples of issues with her accounts below:

In her statement to Berkshire (30 March 2021), Miss B said she lived at home with her father - but in her statement to the police (13 March 2021) she gave her address as a different property.

Based on what Miss B has said, the loss occurred from the address she gave the police - and not her friend's apartment. Berkshire have said that had they known the correct risk address a higher premium would've been applicable - due to their underwriting criteria.

As I've not yet seen a copy of the underwriting ('UW') criteria that sits behind this and it didn't clearly form part of the complaint referred to our Service, my decision will only focus on the decision to decline this claim.

Miss B has said on the night of the loss she was visiting a friend (in the same apartment block from where the loss occurred). She didn't provide contact details for the friend, but Berkshire made contact with the friend who said she knew nothing about the theft, wasn't a friend of Miss B and knew her as a resident on the same floor of the building. Miss B responded to our Investigator to say that they were friends and provided what she's said is a photo of her and the friend. I've placed limited weight on this photo as I've no reasonable way of verifying the two women in it, or the circumstances in which the photo was taken.

However, when deciding if Berkshire had fairly considered this evidence (about the friend claiming she didn't know Miss B), I've also kept in mind the COVID-19 restrictions around socialising in March 2021:

<https://www.gov.uk/government/publications/covid-19-response-spring-2021/covid-19-response-spring-2021-summary> and the friend's possible motivation for not wanting to admit breaking the relevant rules at that time. Miss B has also referred to a falling out with the friend, meaning she may not have been willing to cooperate.

In an email to our Service dated 10 May 2023, Miss B said she had an apartment a few doors down from where she had been socialising on the night of the loss, and returned there towards the end of the night. It was from there, she says, that her former partner took the car keys.

This is (again) different to the version of events she told Berkshire in her statement dated 30 March 2021. At that point she'd told Berkshire: *"I found [sic] about the theft when the police attended the address I was staying at, this was around 3am....."*

As Berkshire have pointed out, this is at odds with the police report. In the police statement, Miss B names her former partner as the person who'd taken the car without her permission and crashed it. However when reporting the loss to Berkshire, Miss B didn't volunteer that information or that they'd been arrested and instead refers to 'someone' taking the car. I've taken a balanced approach to this. On one hand Miss B certainly could've been more forthcoming, but equally, she hasn't actively withheld this information.

Recently, Miss B has explained that she'd been told verbally at the police station that there was a phone call and then a visit from the police - and the police report isn't accurate. We asked Miss B for written confirmation of this – but none has yet been provided.

As outlined above with examples, it's clear there are consistency issues with Miss B's recollections of what happened around the time of the claim event. I've also kept in mind whether or not the details Miss B has been inconsistent about are material to the claim.

Since our Investigator's assessment, Miss B has provided an email (she says is) from the relevant Crown Court outlining that her former partner was successfully prosecuted for (amongst other offences), 'Aggravated vehicle taking'. We shared this information with Berkshire who stated that this information validated one aspect of the claim, as the former partner didn't have permission to drive the car.

Berkshire also told us the remaining policy terms were applicable to the circumstances of the loss. They also added that their main concern was Miss B's version of events being inconsistent and '*whilst there must be a reason why Miss B [name redacted by Ombudsman] is unable to provide a consistent version of events*', the fraud exclusion was still relevant to the decline of this claim.

I've considered what Berkshire have said here and believe what Miss B has recently told our Service to be important. In an email from 14 May 2023:

*"When this had happened, I was naturally **very worried** as [former partner's name redacted and bold added for emphasis by Ombudsman] was my partner of the time, **he was already on a suspended sentence** [bold added for emphasis by Ombudsman] and this careless act while he was also intoxicated and has a driving ban already, he was not insured and having no permission from myself as the owner is stealing and **was likely to activate a lengthy sentencing for him**. [Bold added for emphasis by Ombudsman]"*

*[Former partner's name redacted by Ombudsman] and I split a couple of months later from **this incident as I was a victim of domestic abuse, I believe what he has done with my car was another way to abuse and isolate me** [bold added for emphasis by Ombudsman] and now two years later still causing myself problems."*

I find this to be important information as - like Berkshire have said, there has to be some reasonable explanation for the inconsistencies in Miss B's recollections.

### Summary

I agree with Berkshire that Miss B has been inconsistent in her recollections, but it seems reasonable to assume that Miss B's personal circumstances at that time (as well as the wider relevant COVID-19 restrictions) may have contributed to this and her behaviour.

Berkshire allege that Miss B withheld important information that was material to the claim from them. I'm not currently entirely persuaded by this argument. As it's accepted now that her former partner took the car without Miss B's permission, in my opinion, this means the

other inconsistencies are less material to the overall claim.

Berkshire initially told our Service:

*“As referred to in our opening letter, it is implausible that Miss B’s [name redacted by Ombudsman] whereabouts at the time of the incident are as she has stated. This means that the location of the key when it was taken, and how it was taken, the location of the vehicle, and the whereabouts of Miss B are unable to be verified, and we are unable to validate the claim, which is a direct result of Miss B providing false information and a false alibi. We therefore consider that the fraud condition referred to in our letter dated 10 March 2022 is appropriately applied.”*

I’ve considered if this means Berkshire have fairly and reasonably considered the claim in line with the policy terms. I currently intend to find that they haven’t. Miss B’s ex-partner has been convicted of aggravated vehicle taking:  
<https://www.legislation.gov.uk/ukpga/1968/60/section/12A>.

I agree with Berkshire that there may yet be other relevant terms/considerations here. But I’m only considering what’s happened so far in this decision. Given the possible motivation/explanation that may have led to inconsistencies in what Miss B said, I find that Berkshire have unfairly and unreasonably considered this claim before declining it for the reasons they’ve given.

I’ve questioned what Miss B stood to gain from the various inconsistencies in her accounts of events and that she’s been the victim of a crime (based on the successful conviction).

#### *The disposal of the car and her personal items*

Berkshire have accepted they made an error and I find that paying Miss B the salvage value and £100 compensation is fair, reasonable and proportionate. As no evidence was provided that would prove ownership of the personal items that are alleged to have been in the car, I don’t require Berkshire to take any further action in relation to this point.

#### **Putting things right**

I direct Berkshire Hathaway International Insurance Ltd to:

- Reconsider this claim in line with the remaining policy terms. Berkshire can deduct the salvage value already paid.
- Remove and update any adverse data reported to any relevant underwriting databases in relation to this claim decline for fraud.

#### **My final decision**

I uphold this complaint and direct Berkshire Hathaway International Insurance Ltd to follow my direction, as set out under the heading ‘Putting things right’.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss B to accept or reject my decision before 19 October 2023.

Daniel O’Shea  
**Ombudsman**