

The complaint

Miss A has complained that Advantage Insurance Company Limited unreasonably refused to pay her claim for the theft of her car under her motor policy.

What happened

Miss A car was stolen overnight on 22 August 2022. Later, on 7 September 2022, her car was found damaged but allegedly locked. Advantage believed based on the damage it could be a total loss. Miss A has now sold the car for parts and received £1,500 for that.

However, Advantage said as it was locked and there was no theft related damage it didn't think the theft happened as Miss A said it had. Advantage's instructed engineers checked the electronic control unit (ECU) which showed no other keys than the two Miss A still had in her possession after the theft which had been programmed to the ECU. The engineers also said examining the keys wouldn't show if the car was taken by relay theft (stealing a car by tricking its keyless entry system). Plus, they said it wouldn't show what date and time the keys were used.

Therefore, Advantage refused to pay Miss A's claim. Miss A complained but Advantage wouldn't change its stance, so she brought her complaint to us.

The investigator was of the view Miss A's complaint should be upheld. He didn't think Advantage had done enough to investigate how Miss A's car was stolen in the absence of any other evidence. So, he thought Advantage should pay the claim in line with the remaining policy terms. Miss A had finance on the car which she had continued to pay so the investigator said if any funds were due to Miss A following repayment of the finance it should pay those funds to Miss A with interest. She also was able to hire cars with a discount which the investigator thought Advantage should refund from January 2023 to May 2023 also with interest. Lastly Advantage should pay Miss A £200 compensation.

Advantage disagreed so Miss A's complaint 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'm upholding this complaint along the same lines as the investigator. I'll now explain why.

Overall, I don't consider Advantage has done enough to investigate how this car was stolen, bearing in mind there are no issues whatsoever with Miss A's account of what happened. Nor indeed the fact that how cars are stolen is a constantly evolving issue. The investigator sent out by Advantage to take her statement mentioned via email on 7 September 2022:

'She came across as a pleasant girl, answered all questions. ... She is devastated her car has been stolen and portrayed all the signs of someone that is a genuine victim.'

First, whilst it's possible that it is correct that the car was locked when recovered by the police and then taken to an independent compound, I would have expected to see some clear confirmation of this. More so given both Advantage's instructed engineers plus another salvage agent also instructed by Advantage inspected the car. And more so Advantage's reliance on this issue.

The salvage agent said the following:

'Nature of Damage

The vehicle is the subject of a theft incident. There are no obvious signs of forced entry, the steering and ignition system/locks appear to be intact. The vehicle is the subject of a theft incident. All elements of the vehicle's identity (vin numbers) appear to be intact. The vehicle appears to have been involved in a roll overtype incident, resulting in extensive body and structural deformation, including mechanical /steering and suspension components with SRS deployment.'

The engineers instructed by Advantage said the following:

'We found no evidence of forced entry, door locks and steering lock were found to be intact with no evidence of damage to the surrounding area or wiring loom.

...

Conclusion

Physical inspection of the vehicle found no evidence of forced entry, all locks and steering lock were found to be intact with no evidence of tampering to the surrounding area or wiring loom.'

Neither actually confirmed that the car was locked, although there is no lock damage reported.

Within Advantage's file on 27 September 2022 there was a recommendation to check if the car was locked at the time of recovery. Its file also says on 5 October 2022 the police didn't attend so police enquiries haven't been fruitful. However, on 10 October 2022 Advantage's file noted that *'O/B to [police compound company] to confirm if vehicle was locked when recovered – they advs they didn't have keys and it was locked.'* But that's the only direct evidence about this.

Clearly in relay theft a device or devices is used to trick the entry system so there would never be any noticeable lock damage to report which is exactly what both Advantage's instructed engineers and salvage agents reported. In order to follow Advantage's subsequent arguments on the issue that in relay theft cars then can't be locked again after the theft, I would prefer that it was absolutely clear the car doors were locked. I don't think this was adequately shown here. I would have expected both the engineers and the salvage agent to confirm this or indeed for Advantage to get it in writing from the police compound operatives since it became such an important piece of evidence which Advantage relied on to decline Miss A's claim.

Secondly, in the final response letter of 4 April 2023 and also in the instructed engineers' correspondence and telephone calls with Advantage around December 2022, the engineers offered in addition to examining the ECU (which didn't shed any light on the matter) that it could look at the infotainment system which might show or confirm additional information in

relation to the use of the car. This was never done, and I consider it should have been done as a matter of course.

Thirdly, the instructed engineers said on 29 September 2022 the following, despite this being after the car was in fact recovered:

'As the vehicle is not recovered there are 2 options for looking at the keys, we can do one of our standard inspections on the keys to check physical condition, blades and look for date numbers as well as checking that the immobiliser chips are matching types. In addition to this we can send the keys to [the manufacturers' abroad] who will check the keys against the manufacturer's database, they will then be able to advise if the 2 keys supplied are for the insured vehicle and if they were supplied by the factory in addition to confirming if any additional keys have been supplied by the dealer network. The cost to send the keys is around £200 per key should you wish to have this undertaken. There is no usage information within the keys so due to this we would be unable to confirm when the keys were last used even if the keys were inspected by [the manufacturer]. I hope this assists.'

This was also never done. Indeed, the keys were never read or investigated at all. This is despite on 23 September 2022, Advantage noted Miss A had told it that her spare key didn't work from the day she bought the car. She went back to the company that sold her the car, but they couldn't fix it either. So, then she met with the car manufacturer's agent who advised a new key would have to be ordered. Her car was stolen before any new key was ready.

Lastly there seems to be some confusion about whether this car had keyless entry or not.

On 23 September 2022 Advantage in an email to its instructed engineers said:

'I wanted some clarification on possibly key inspection. The vehicle was stolen without use of keys, has now been recovered, no signs of forced entry and vehicle keys are keyless. In your opinion if a key read was completed, would the read show evidence of theft relay or would it compromise it?'

Clearly it was thought the car had keyless entry at this stage. But on 6 December 2022 the engineers said in its report that:

'This vehicle does not appear to have a keyless entry system, due to this it is our opinion that this vehicle was either unlocked at the time of theft and taken via relay theft or the vehicle has been taken using one of the 2 original keys currently programmed to the immobiliser.'

In response to the investigator's view Advantage said the following:

'The evidence we have from [engineers] is sufficient enough to decline the claim. [Engineers] have confirmed that the only way for the vehicle to be stolen would have been with one of the two keys programmed. This was due to the fact the vehicle was found locked. We explored several methods the vehicle could have been stolen. The vehicle was found locked and the entirety of the vehicle was not keyless, meaning a key was needed initially to access the door of the vehicle. We also looked at a transponder key which was a possibility to bypass the doors mechanism, but a key would have been needed to lock the car as this would work in tandem with the locking mechanism, however the relay box is unable to store this data after the vehicle is stolen.'

And a further response from Advantage to the investigator said:

'...when an expert in the field has said it isn't the case. With respect, I feel you are either missing or misunderstood a key aspect of the evidence, we are not saying it isn't possible to steal a vehicle without its key, but it is impossible to then relock the stolen vehicle without its original key or a new coded key. This vehicle was found locked, therefore it needed a key.'

A simple internet search shows that the make and model of Miss A's car has keyless available on all models. I'm not sure whether that means all available models were keyless or whether it was an option to be chosen. But certainly, that indicates it could have been keyless just as the original Advantage operative said on 23 September 2022. Given the lack of any examination of the keys by the engineers, I'm not persuaded of their conclusions that Miss A's car didn't have a keyless entry system.

So, in conclusion, there is a lack of clarity as to whether the car was locked or not which I don't consider is very reasonable, and it's a pity neither the engineers nor the salvage agent who both inspected the car confirmed this. There are also further investigations with both the keys and infotainment system which weren't explored. And there seems to be some confusion and lack of clarity on how keyless or not this car actually was. On that basis given the veracity of Miss A, plus the constantly evolving ways of stealing cars, I don't consider it's fair and reasonable for Advantage to decline this claim given this lack of bottoming out all the remaining issues. Therefore, I think it should pay her claim under the remaining terms and conditions of the policy.

Miss A had finance on her car which she has continued to pay. Under the policy terms Advantage must first pay the balance owed on the car back to the finance company. Any funds remaining are payable to Miss A with interest from the date the claim was denied which was 5 January 2023.

In addition, Miss A has produced invoices to show she paid for hire cars between August 2022 to June 2023, when she was able to borrow a family's member's car for a month until she could again buy a cheaper car on finance from 19 July 2023. She said she had to borrow money from family and friends to do this. But that also a family member was able to obtain some discount for her given car hire connections. Clearly this shows Miss A suffered a loss of use of her car which is something we consider when we find an insurer wasn't fair and reasonable in its decision on the claim. She explained she is a single parent and requires transport to deal with her children going to school and other activities. The invoices show Miss A hired cars from well-known hire car companies and therefore there is nothing to show me her costs of car hire were unreasonably inflated.

I agree with the investigator's thoughts that the car hire costs should be refunded from the date Advantage formally declined to pay her claim which was 5 January 2023, given theft cases can take some time to investigate. I note the hire invoice dated 27 January 2023 shows Miss A paid a deposit on 30 December 2022 and again on 13 January 2023 so the refund should run from this payment amount made on 13 January 2023. I note that Advantage now has copies of all the car hire invoices, bar one around 24 May 2023 to 15 June for £2,217.15, which Miss A should get the hire company to produce for her to send it to Advantage. Whilst the investigator was of the view this one was higher than others, I consider it's not out of line when we look at the invoice dated 6 September 2022. So, I think if Miss A can produce a copy of that invoice, it should be refunded too. If she can't produce that invoice, then I consider Advantage is under a duty to refund it. Given our stance on loss of use we do consider the refund of reasonable car hire charges is fair. Interest should be added on these costs from 5 January 2023 or thereafter when incurred.

Clearly this has caused Miss A some considerable trouble and upset and I consider the amount of £200 compensation suggested by the investigator to be in line with our approach. And it's of an amount that I would have awarded if the investigator hadn't suggested it.

My final decision

So, for these reasons, it's my final decision that I uphold this complaint.

I now require Advantage Insurance Company Limited to do the following:

- Pay the claim in accordance with the remaining terms and conditions of the policy.
- As Miss A had finance on the car, Advantage should pay the balance outstanding to the finance company. Any funds which are remaining should be paid to Miss A adding interest of 8% simple per year from the date the claim was declined being 5 January 2023 to the date it pays her.
- Refund the car hire charges on the invoices supplied by Miss A from 5 January 2023. As detailed above one of these invoices is missing for 24 May 2023 to 15 June 2023 for £2,217.15. If Miss A can produce this invoice Advantage should include it in the refund but if she can't produce it, then Advantage can leave that amount out of its refund. As also detailed above the invoice for December 2022/January 2023 showed Miss A paid a deposit on 13 January so it's that payment which should start the calculation of the refund. Interest of 8% simple per year should be added from the date Miss A paid each invoice to the date it refunds her.
- If income tax is to be deducted from all of the interest detailed above, appropriate documentation should be provided to Miss A for HMRC purposes.
- Pay Miss A £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 23 February 2024.

Rona Doyle
Ombudsman