

The complaint

Miss D complains about how Advantage Insurance Company Limited handled her claim against her motor insurance policy and its decision to decline her claim. Reference to Advantage includes its agents.

What happened

In summary, on 2 October 2022, Miss D says she discovered her car had been stolen from outside her home. She reported the matter to the police and made a claim against her policy. Advantage asked Miss D to provide an image of both car keys. Miss D said she only had one key and couldn't find the other key. I'll refer to that in more detail below.

On 20 October 2022, the police recovered Miss D's car. Advantage arranged collection and inspection of Miss D's car. Advantage's notes show that when Miss D's car was recovered it had false plates and was unlocked with no key present. The engineer instructed by Advantage reported damage to several areas of the car and said the car was a total loss. He said there was no obvious signs of forced entry and the ignition systems and locks appeared to be intact.

Advantage instructed a second engineer to inspect the electronic control unit (ECU). That engineer said the ECU found no faults consistent with theft and the immobiliser showed only two keys were currently programmed. He said the available key had been used 2,795 times and the missing key had been used 1,510 times since the date of the manufacture of the car. The engineer said Miss D's car could only have been taken using one of the two original keys.

In February 2023, Advantage declined Miss D's claim. It said Miss D had broken the terms of her policy. Advantage said there was no evidence of theft or attempted theft. In subsequent correspondence with this service, Advantage said the terms of the policy Miss D had broken related to fraud.

Miss D complains about the time it took Advantage to deal with her claim and its decision to decline it. She says Advantage's handling of her claim caused her financial loss, stress and anxiety. Miss D wants Advantage to settle her claim.

In response to Miss D's complaint, Advantage maintained its decision about the claim but apologised its salvage company told her about that before it had done so.

One of our investigators looked at what had happened. The investigator didn't think Advantage had acted fairly. She said it's not in line with this service's approach to say that a theft can't occur without one of the car keys. The investigator said information from the police and industry experts suggests some cars can be stolen without using one of the original keys.

The investigator didn't think the information Advantage had provided about use of the keys or about faults after the date the car had been taken showed Miss D's car was

stolen with one of the original keys. She noted that when Miss D's car was recovered, it had collision damage, false plates and an illuminated fuel light. The investigator said the evidence suggests Miss D's car was driven carelessly by criminals and used until the fuel ran out.

The investigator said Advantage hadn't obtained the police reports as part of its investigation and she thought it should have considered them, as it relied on the terms in the policy relating to fraud to reject Miss D's claim.

Advantage didn't agree with the investigator. It said the investigator had no evidence about how she thought Miss D's car was stolen and the circumstances of the theft. Advantage said it has an expert's report which confirms there was no forced entry and no other way for the car to be taken, unless it's with a key.

Advantage said its expert said only the two original keys were programmed for the car and Miss D admitted she lost one key during a house move two months before she made the claim. It said Miss D didn't safeguard her car by reporting the loss of the second key and reprogramming the first key.

Advantage referred to a similar case which hadn't been upheld by this service. It asked that an ombudsman consider the complaint, so it was passed to me to decide.

As Advantage is aware, this service considers each case on its own facts and merits, so I don't refer to decisions in other cases here.

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.

I've taken into account the law, regulation and good practice. Above all, I've considered what's fair and reasonable. The relevant rules and industry guidance say Advantage has a responsibility to handle claims promptly and fairly and it shouldn't reject a claim unreasonably.

It's not my role to establish how Miss D's car was taken. It's my role to consider how Advantage came to its decision to decline Miss D's claim and whether it acted fairly and reasonably in doing so.

When Miss D made her claim it was for her to show she'd suffered an insured loss. If she did this, it was then for Advantage to show why it didn't have to settle her claim.

Advantage didn't obtain the police reports in relation to Miss D's reporting of the theft or its recovery. Those reports may include details about the circumstances of the theft and what subsequently happened to Miss D's car. It's not clear to me why Advantage didn't request those reports. I think a reasonable investigation of the claim would include consideration of police reports.

I'll now consider the reasons Advantage has given for declining the claim.

When it first declined Miss D's claim Advantage said this was because she'd breached the terms of her policy agreement. And that it hadn't found any evidence to support that there had been a theft or attempted theft of her car.

On balance, I think the evidence indicates Miss D's car was stolen, so she did suffer an insured loss. In reaching that view, I've noted Miss D's report of the theft to the police and Advantage and the information about the condition of the car when it was recovered. It had false plates, had been driven, had impact damage and little or no fuel. I think it's a reasonable conclusion that Miss D's car was stolen by a thief or thieves and used until it ran out of fuel.

So, I do not consider that Advantage was entitled to turn down Miss D's claim on the basis there was no evidence of the theft or attempted theft of her car.

Advantage did not say when it declined Miss D's claim what part of its policy agreement it thought she had breached. But, it has since said it was referring to the fraud condition.

The policy says the following under the general conditions:

'7. Fraud

You must not act in a fraudulent manner. If you, or anyone acting for you:

- Knowingly provide information to us that is not true*
- Mislead us in any way [...]*
- Make a claim under the Policy knowing it to be false or fraudulently exaggerated in any respect*
- Submit a document in support of a policy or claim knowing the document to be forged or false in any respect*
- Make a claim for any loss or damage caused by your wilful act or with your knowledge.'*

I don't think there's any compelling evidence Miss D was in any way involved with the theft of her car. And there's no direct evidence Miss D left one of her keys either in her car or where a thief or thieves could access it. I say this because there was no key in the car when it was recovered. And Advantage's engineers have not provided evidence from the ECU on Miss D's car to prove that the last key used to drive it before it was recovered was the spare key. I appreciate this information may not have been available from the ECU, but the engineer has not said this, which means Advantage lack the evidence to back up its view this key was used to steal the car.

I do of course appreciate Advantage thinks the only way Miss D's car could have been stolen was using the spare key, as the ECU showed that there were only two keys coded to the car. But, as I understand it, there are now various devices thieves use to steal cars and it seems possible some of these would not show on the ECU. Of course, if the engineers had commented in more detail on these other devices and ruled them out, it may have been that I'd have been persuaded that the spare key was used to steal Miss D's car. But they haven't and this means I do not think Advantage has done enough to prove this was the case.

In view of what I've said, I do not consider Advantage has done enough to prove Miss D acted in a fraudulent manner when she made her claim.

Advantage has also suggested Miss D breached the terms of her policy by not safeguarding her car. It has said this is because she didn't report the spare key as lost and make arrangements to safeguard her car because of this.

I accept one of the general conditions of the policy says Miss D must protect her car from damage or loss, i.e. safeguard it. But Miss D has said she last saw the second key at her mum's house, where she lived before moving to the property from which her car was stolen. She says she hadn't seen the second key since she moved from her mum's house and she's searched her house and her mum's house but can't find it. Miss D assumes it was lost in transit during her move. She says she didn't realise it was lost until after the theft.

I accept what Miss D has said about the second key. This is because the information she's given about it has remained consistent and is plausible. And because I think the data about the use of the keys since manufacture supports the conclusion that Miss D mainly used the key that remained in her possession, although I appreciate the data doesn't include information about the periods when each key was used. Therefore, I don't think Advantage's suggestion that Miss D didn't safeguard her car when she failed to act following the loss of her second key is reasonable. Miss D didn't know the key was missing until after the theft, so she couldn't have perceived a risk that she needed to take steps to avert.

I appreciate Advantage has also suggested that in losing the spare key, i.e. not keeping it safe, Miss D failed to safeguard her vehicle, but I do not agree on this. Many people think they know where their spare key is and can't find it when needed and I don't think it is reasonable to suggest that someone mislaying a key in the passage of time has failed to safeguard their car. There is also nothing compelling to suggest that Miss D losing her spare key had anything at all to do with the theft of her car.

Advantage hasn't cited any other terms that it wishes to rely on to reject Miss D's claim. Therefore, for the reasons I've explained, I consider the fair and reasonable outcome to her complaint is for Advantage to settle her claim in accordance with the claims settlement terms in her policy. I think Advantage should have settled it within one month of the date of the theft. So, I consider this needs to be taken into account when working out the appropriate redress.

Miss D says Advantage didn't provide her with a car following the theft, but it's not obliged to do so under the terms of the policy. But I think that it should have settled her claim in a reasonable time.

Miss D says she had to take out a finance agreement for another car, as she needed to get to work. So, she suffered consequential loss as a result of Advantage's decision to decline her claim. The car that had been stolen was still the subject of a finance agreement, which Miss D continued to pay.

If Advantage had settled Miss D's claim within one month of the date of the theft, it would have repaid her finance on the car that had been stolen, and paid any remaining balance to her, which she could have used towards buying another car. So, Miss D would have paid less interest as she'd have one finance agreement for a reduced amount, not two finance agreements.

In order to put things right, Advantage should pay Miss D interest on the amount now due to her on settlement of her claim, either at the rate of 8% simple per year or, if higher, at the rate of interest Miss D is paying for the finance of her new car.

Advantage should also pay Miss D a sum equivalent to the interest (not the capital) she's paid in relation to the finance agreement on her stolen car, from one month after the theft, until settlement.

I think Miss D suffered considerable distress and inconvenience by Advantage's handling of her claim and its decision to decline it. There's always some distress and inconvenience following the theft of a car but Advantage caused unnecessary additional distress and inconvenience in this case. Advantage took longer than we'd expect to come to its decision in Miss D's case and declined her claim unfairly. Whilst Miss D replaced her car, she has explained she struggled to afford two finance payments, which were around a third of her monthly income. That caused additional distress at an already difficult time. I think fair compensation for Miss D's distress and inconvenience is £500.

It's not clear to me whether Advantage has recorded its decision to decline Miss D's claim as one that's due to fraud. If it has done so, it should remove any reference to the decline and fraud from internal and external records and databases and confirm to Miss D that it has done so.

Putting things right

In order to put things right, I now require Advantage to do the following:

- Settle Miss D's claim in accordance with the claims settlement terms in her policy.
- Pay interest on any settlement amount payable directly to Miss D, from one month after the date of the theft, to the date of settlement, either at the rate of 8% simple per year or, if higher, at the rate of interest Miss D is paying for the finance of her new car,
- Pay Miss D a sum equivalent to the interest (not the capital) she's paid in relation to the finance agreement on her stolen car, from one month after the theft, until settlement, adding 8% simple interest per year, from the date she made those payments, to the date of settlement.
- Pay Miss D compensation of £500 in relation to her distress and inconvenience.
- Remove any reference to its decision to decline the claim and fraud from any internal and external records or databases and confirm to Miss D that it's done so.

If Advantage considers it's required by HM Revenue & Customs to take off income tax from the interest, it should tell Miss D how much it's taken off. It should also give Miss D a certificate showing this, if she asks for one, so she can reclaim the tax, if appropriate.

My final decision

My final decision is that I uphold this complaint. Advantage Insurance Company Limited should now take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 18 September 2024.

Louise Povey
Ombudsman