

## **The complaint**

Mr N complains that Advantage Insurance Company Limited (“Advantage”) rejected his claim for the theft of his car under his motor insurance policy and then said it would recover costs from him.

## **What happened**

Mr N had a motor insurance policy with Advantage, arranged through a broker.

His car was stolen from outside his house in July 2023.

Shortly after the car was stolen, it collided with a third-party vehicle causing damage to both vehicles. The thieves ran from the scene.

Mr N contacted Advantage and made a claim.

Advantage investigated what had happened. Mr N told it he had two keys, and kept one key for the car inside it, but that key wasn’t working. When the car was recovered, Advantage said there was no sign of a forced entry. The police said the car was found with a key inside. Advantage said his car was beyond economical repair and would be written off.

Advantage sent an expert who said they thought the car could only have been taken using a key. It said it thought Mr N’s car had been left unsecured with a key inside. It rejected the claim.

It said it would pursue Mr N for the costs it incurred in handling the claim, including the cost of repairing the third-party vehicle that had been hit, over £9,000 in total.

Mr N brought his complaint to this service.

Our investigator looked into it and said he thought Advantage had fairly rejected Mr N’s claim for the damage to his own car, but he didn’t think Advantage should continue to recover its costs from Mr N. He thought Advantage had caused Mr N distress as it chased him for the costs for an extended period and he thought it should pay him £350 compensation.

Advantage didn’t agree with the view. It said it had paid the third-party costs as Road Traffic Act 1988 (“RTA”) insurer, and under the terms of its policy it had the right to recover those costs from Mr N.

Because it didn’t agree, this complaint has been passed to me to make a 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.

Having done so, I’m upholding Mr N’s complaint in part. It’s important I say I think Advantage reasonably rejected his claim, but I also don’t think it can fairly recover costs from him. I’ll

explain why.

Firstly, I'll deal with the theft of Mr N's car. In its policy wording I can see the following terms:

*"What isn't covered under sections 1 and 2*

*You're not covered for:*

- *Theft of or damage, if the Car Keys were left in or on the Car or if the Car is left unattended with the engine running"*

And under the general exceptions:

*"Your Car must be fully locked and secured and any Keys that unlock your Car must be removed when it's left unattended or unoccupied"*

I can see from Mr N's evidence that he said the key he left in the car couldn't be used to operate the car. I'm not sure why this was the case. But I can see the police reported the car was found with its engine running and a key inside it. And it's my understanding that Mr N still had his 'usual' key with him in his house.

Advantage had engineers and key experts look at the evidence and examine the car. They agreed the car showed no sign of forceable entry, and this made them think Mr N's car was taken using a key. And as he's said a key was inside the car, which is in contravention of the policy terms, I think Advantage has reasonably rejected his claim for the theft of his car.

Advantage has pursued Mr N for its costs in handling the claim, together with the third-party's damage and costs. It's asked Mr N to repay a total of £9,263.30 and has said it will take legal action against him for this.

Under the terms of its policy, Advantage says:

*"If your Insurer doesn't accept your claim, you may have to pay any costs already incurred.*

*These may include (but are not limited to) engineers' fees, vehicle recovery and storage charges."*

In its responses to this service, Advantage refers to its general conditions and said these allow it to recover money from Mr N:

*"we have the following options: cancel the policy, refuse to deal with a claim or/and ask you to pay us back."*

But these words don't appear in the policy wording I've been supplied with, which reads:

*"your Insurer may be entitled to cancel the policy, refuse to deal with your claim or reduce the amount of any claim payment."*

However, elsewhere in the policy wording there is this section:

*"In all the circumstances listed in general exceptions and general conditions, no cover will be provided to you under the Policy. Instead, your Insurer's liability will be restricted to meeting the obligations as required by Road Traffic Act or alternative laws that apply in the country in which the loss occurs. In such circumstances, Insurers may seek to recover from you, or the driver, any sums paid by the Insurer to*

*discharge that person's liability, whether in settlement or under a court judgement."*

It seems to me that Advantage may have the ability to recover third party costs from Mr N under the terms of its policy as it's said it's required to handle the third party losses under the terms of the RTA.

From the information I have, the driver of the car was unidentified and untraced. So it's my understanding that there may be an alternate route of recovery available to Advantage.

But I need to consider whether Advantage's decision to recover costs from Mr N is fair and reasonable and in line with the legislation.

In its response to the view, Advantage said it didn't agree that the theft of Mr N's car and the subsequent damage caused were two separate events. It said Mr N's car was stolen and caused third party damage as a direct result of the theft.

But I don't agree. Mr N's car was stolen, and I can see Advantage accept this. Mr N seems to have failed to keep his car secure, but the thief then took advantage of the situation and caused the collision. The proximate cause of the collision reasonably wasn't Mr N's failure to secure his car, it was the actions of the untraced driver.

I see Advantage's position that the two are linked, but I don't reasonably agree the link is causal.

Advantage's wording is somewhat wider in scope than this and allows it to recover those third party costs as long as it is acting as the RTA insurer, but it does say it "may" recover them. And I think in Mr N's situation the recovery of them would lead to an outcome that is unfair for him. I've also considered the relevant legislation and I can see that it says:

*"Where an insurer becomes liable under this section to pay an amount in respect of a liability of a person who is not insured by a policy he is entitled to recover the amount from that person or from any person who..."*

*(b)caused or permitted the use of the vehicle which gave rise to the liability."*

I don't think Advantage can fairly say Mr N was responsible for the damage caused by the thief, who stole his car (clearly) without his permission. It follows that I don't agree Advantage can reasonably pursue Mr N for the third party costs.

Although I recognise that Advantage may be able, under the terms of its policy wording, to recover things like investigation and storage costs from him, I think Mr N's mistake in not securing his car means he's already suffered a significant financial blow. Advantage would have reasonably covered its own costs and expenses if the claim had been found to be valid, and it follows that, but for Mr N's mistake with his key, it would not be pursuing him for recovery.

So I don't think it would lead to a fair or reasonable outcome if Advantage seek recovery of its own costs from him. I can see from the file that Advantage had some concerns about the claim at an early stage, but it hasn't rejected the claim on the basis of those concerns, so I'm not going to refer to them more here.

I've also considered Mr N's experience during his claim and subsequent investigation. He's told this service about his distress caused by Advantage trying to recover a significant amount of money from him while he was struggling with personal issues.

The distress he's suffered has taken place over an extended period. I've thought carefully about this and considered this service's guidelines on compensation, and I think the figure of £350 is appropriate. I also think Advantage should ensure the events covered in this complaint are recorded on its internal and any external databases as a theft claim for Mr N, and any third party element didn't involve him.

### **My final decision**

It's my final decision that I uphold this complaint. I require Advantage Insurance Company Limited to:

- Pay Mr N £350 compensation for his distress and inconvenience.
- Cease its recovery of costs from Mr N.
- Ensure details of the events are recorded appropriately on its internal and any external databases it's updated.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 17 October 2024.

Richard Sowden  
**Ombudsman**