

## **The complaint**

Miss H has complained about Advantage Insurance Company Limited's decision to reject a claim she made under her car insurance policy.

## **What happened**

Miss H made a claim to her insurer Advantage following the theft of her car outside her home.

Advantage investigated the circumstances of the incident and decided to reject Miss H's claim. It said the evidence didn't match the circumstances as Miss H described.

Miss H complained to Advantage. She said it had discriminated against her when dealing with her claim as she has a disability. She disputed the evidence: mainly the recording of her car key and when it was last used.

Miss H said Advantage caused delay and had failed to return her car key to her, so that she could arrange independent testing of it.

Advantage didn't uphold Miss H's complaint, so she asked us to look at her complaint.

Our Investigator recommended the complaint should be upheld in part. He thought Advantage shouldn't have attempted to call Miss H, when her contact preference was email.

He recommended Advantage pay Miss H £100 compensation for the distress and inconvenience caused by receiving calls – and for Advantage to return Miss H's car key to her so that she could obtain an independent report.

Advantage didn't agree it should pay compensation for calls it made which Miss H didn't answer. It said this service is essentially asking it to pay compensation for something that might have happened. As Miss H made more calls to Advantage than it made to Miss H – which were unanswered – it doesn't agree it should pay compensation for distress or inconvenience caused by it calling Miss H.

It agrees to return Miss H's car key to her, subject to Miss H obtaining an independent report within 30 days of the return.

Miss H was very upset with the outcome. She informed Advantage by email when she first made her claim that she is hearing impaired and struggles with hearing phone calls. So she asked Advantage to arrange a time to call her if this was necessary so that she could arrange to have an interpreter with her.

Miss H said when she called Advantage, it was because she hadn't received an acknowledgement to her email. She said she explained to the agent she had somebody with her and the call was on speakerphone.

Miss H didn't agree with Advantage's decision.

I issued a provisional decision on 17 July 2024. I intended to uphold the complaint in part. I thought Advantage's decision to reject the claim from the information it had was reasonable. But I intended to ask Advantage to pay a total compensation award of £300 for failing to make reasonable adjustments and failing to return Miss H's car key to her when requested. I asked Advantage to return Miss H's car key to her to allow her to obtain an independent report.

I haven't received any response from either party to my provisional decision. So the case has been passed back to me 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.

As I haven't received any comments from either party, my final decision is on the same lines as my provisional decision.

For ease I've set out the complaints under headings below;

#### *Advantage's decision to reject the claim is unfair and it has discriminated against Miss H*

When Miss H reported the theft to Advantage, it asked Miss H for verification documents, including both sets of keys. This isn't unusual.

Miss H explained that she could no longer find the spare key, so she provided the one she said she used for her car. Miss H said she believed the spare key was lost, and that it may have been thrown away with other keys by mistake by a relative some time ago.

So to proceed with Miss H's claim, Advantage arranged for the history of the remaining key Miss H provided to be checked.

Advantage received a report on the key which said it hadn't been used for 12 days up to the date of the reported theft. So this was inconsistent with the information Miss H gave when she reported the theft of her car.

Miss H said this wasn't possible – as she had used the car to travel to and from work that day – and had visited a relative.

Advantage said the contractor who provided the report said the key may not always record trips of less than two miles – but outside of this, the information recorded against the key was correct. Miss H hadn't reported any signs of damage such as broken glass to show signs of forced entry to the car.

So, based on the information available to Advantage, it believes it's possible a second key was being used for Miss H's car. It says that where a spare key has been lost, a consumer should take steps to protect their car in line with the policy by having the existing key reprogrammed to reduce the risk of theft. It says this is a general condition of caring for their car which is set out under Advantage's policy wording.

I think Advantage's decision to reject the claim because of inconsistent information – and based on the evidence it had – was reasonable and in line with the policy.

Miss H's policy with Advantage says;

*"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, including about who is the main user of the car, in order to get insurance from us, obtain more favourable terms or reduce your premium*
- 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."*

Then, depending on the circumstances:

*"• Your Insurer may be entitled to refuse responsibility for the claim to which the alleged*

*fraud or falsehood relates. They may also be entitled to cancel or void the Policy without refunding your premium*

- All other policies you have entered into through us, to which you are connected (including van, bike and home insurance), may be cancelled and your Insurer will only give you a pro-rata refund*

*Your Insurer may inform the police of the circumstances of the claim."*

It isn't for us to decide if an insurer has acted fraudulently or not, but to decide whether it was reasonable for the insurer to apply its exclusion based on the evidence available to it.

In this case, I think Advantage's decision to reject the claim was reasonable.

I understand Miss H strongly disagrees with the findings of the report as she says this was the key she used and she says the data is incorrect. She says her journey to and from work was over two miles – and was made hours before her car was stolen outside her home.

I think Miss H should be given the opportunity to obtain independent evidence of equal weight. So I think Advantage should return Miss H's car key to her by safe recorded delivery.

Advantage should allow 30 days from the date of receipt, or my final decision, whichever is later, to make such arrangements and submit a report to Advantage.

Miss H says she feels Advantage has discriminated against her given the problems she's experienced. I can understand why Miss H feels this way but having looked at all the evidence I don't think Advantage has done so. Nor do I think Advantage has acted unfairly or unreasonably. I hope that it helps Miss H to know that someone impartial and independent has looked into her concerns."

*Advantage caused distress by failing to follow Miss H's communication preference*

Miss H provided a copy of her initial contact with Advantage to make her claim. The email dated 26 April 2023 reads:

*"I am hearing impaired so I struggle to hear phone calls, but if you would like a time to have a call about this, please let me know when is best, so that I can make sure I have someone with me to interpret."*

Miss H says she called Advantage two days later as she hadn't received a reply to her email. She said she explained in this call that she was on loudspeaker and her relative was with her to help due to her hearing impairment.

I can't see a record of a call on 28 April 2023. But I can see that Advantage's claim notes show a record of an inbound call from Miss H on 4 May 2023. Their notes read:

*"PH has advised she has a hearing impairment so struggles on calls. PH would prefer all contact by email moving forward."*

In a follow up email dated 4 May 2023, Advantage wrote;

*"Good Afternoon, Thank you for your phone call today, as confirmed with yourself going forward I will email yourself any updates in relation to your claim."*

However, Advantage attempted to call Miss H on 17 May 2023. But there was no answer.

On 19 May 2023, Advantage emailed Miss H to ask her to send her key and if she had been able to locate the spare key.

Miss H responded by email.

On 26 May 2023 Advantage made a call to Miss H, which she didn't answer. It followed up with an email on the same date. Miss H responded by email.

On 20 July 2023 Advantage called Miss H again to discuss her email dated 14 July 2023 and had left a voicemail message. This was followed up with an email from Advantage which read:

*"Good afternoon, we tried to call you today but we couldn't get a hold of yourself, so if you could please email us back for an update."*

Advantage called Miss H again on 1 August 2023. Advantage left a voicemail to say a letter would be sent to Miss H.

Miss H called Advantage back on the same day to ask about the contents of the letter.

On 25 August 2023 Advantage wrote to Miss H at the risk address. In response, Miss H wrote to Advantage to appeal its decision to reject her claim and advised it of her change of

address. She explained that she had moved address as no longer felt safe at home following the theft of her car.

However, Advantage wrote to Miss H on 6 September 2023 at the risk address, so didn't take into account the change she'd advised.

It's not clear to me in any event why Advantage sent a letter to Miss H by post rather than

sending the letter by email to her, in line with her communication preference.

Advantage says that because Miss H at times called Advantage, this would suggest it was suitable on the rare occasions for Advantage to have called Miss H – and in any event she didn't answer their calls. So Advantage doesn't agree that by calling Miss H it caused her distress which warrants a compensation award.

I'm not persuaded by this. I agree Miss H is likely more upset about the outcome of the claim and her disability, however, she's made it clear to us that it was distressing for Advantage to keep calling her despite it being aware of her disability.

There have also been delays – even its only 48 hours between a call being made and an email being sent. Furthermore for each time Miss H has had to call back to reply, she's had to get support from family to do so. This wouldn't have been needed if Advantage had made the reasonable adjustment it had agreed to.

It isn't for Advantage to say if it was distressing for Miss H or not. It's how Miss H was made to feel. She was clearly very distressed about the claim and Advantage left voicemails that she couldn't clearly listen to for updates.

For these reasons I think Advantage should pay Miss H £200 compensation for the distress and inconvenience caused by its failure to take into account its obligation to make reasonable adjustments for Miss H – and on the basis of how Miss H has told us Advantage's actions have made her feel.

*Advantage caused delay and failed to return Miss H's car key to her*

On 25 August 2023 Miss H asked Advantage by email to return her car key to her by recorded delivery by 8 September 2023 so that she could obtain her own report .

On 13 October 2023 Miss H requested this again by email to Advantage.

On 28 June 2024 Advantage wrote to this service:

*"The key was returned to ourselves in June 2023 and if Miss H wishes to have this returned to her we can do this. I agree a timescale of 30 days would be appropriate for her to have this tested and send us her report for this."*

I can see no reason why Advantage didn't return Miss H's car key to her when she first requested this in August 2023. Or in October 2023 when she repeated her request. So I think Advantage has provided a poor service here. It's clear that this has remained an important part of Miss H's complaint which she brought to us in January 2024 – as she wants to arrange for an independent report on the key. But Advantage failed to acknowledge or deal with her reasonable request in a timely way.

So for the distress and inconvenience caused by Advantage's failure to acknowledge or deal with Miss H's request for her car key to be returned to her, I think it should pay compensation of £100.

### **My final decision**

My final decision is that I uphold this complaint in part. I require Advantage Insurance Company Limited to do the following:

- Pay Miss H a total of £300 compensation for the distress and inconvenience caused by its failure to make reasonable adjustments for Miss H and failing to deal with her request for the return of her car key since August 2023.
- Return Miss H's car key to her by recorded delivery. Advantage should check the address to send it with Miss H beforehand.
- Advantage should allow 30 days from the date of receipt of the car key for Miss H to make arrangements for an independent report on the key's history. I think a reasonable timeframe for Miss H to provide Advantage with a report should be 30 days from the date of receipt of the key, or the date of my final decision, whichever is later.

Advantage Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Miss H accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

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

Geraldine Newbold  
**Ombudsman**