

The complaint

Mr H complains about Advantage Insurance Company Limited (“AIC”) and their decision to decline the claim he made on his motor insurance policy, following the theft of his car.

What happened

The claim and complaint circumstances are well known to both parties. So, I don’t intend to list them chronologically in detail. But to summarise, Mr H held a motor insurance policy, underwritten by AIC, when his car was stolen by a prospective buyer. So, he contacted AIC to make a claim.

AIC declined Mr H’s claim, relying on a theft by deception exclusion contained within Mr H’s policy documents. Mr H was unhappy about this, so he raised a complaint about both the claim decline and the clearness of the policy exclusion AIC were relying on.

AIC responded to the complaint and didn’t uphold it. They thought they had acted fairly when declining the claim, considering the theft circumstances and evidence provided to them, including the CCTV footage Mr H had been able to provide. So, they didn’t think they needed to do anything more. Mr H remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it. They accepted there was a policy exclusion that related to theft by deception. But they didn’t think AIC were fair to rely on this exclusion, considering our service’s approach and the evidence made available to them, explaining why they felt Mr H had taken reasonable care during the theft. So, they recommended AIC reassess the claim, without considering the theft by deception exclusion originally relied upon. And they recommended AIC pay 8% simple interest on any payment made, from the date of theft to the date of settlement, alongside a £300 compensatory payment to recognise the impact the claim, and its decline, had on Mr H’s mental health.

Mr H accepted this recommendation. But AIC didn’t, providing several arguments setting out why. These included, and were not limited to, AIC’s belief that further evidence was required to fully understand what was agreed regarding a potential test drive. And they reiterated why they felt they were fair to rely on the policy exclusion, considering the theft circumstances and the action they felt Mr H should’ve taken to mitigate it. As AIC didn’t agree, the complaint was passed to me for a decision.

On 23 September 2023, I issued a provisional decision explaining my intention to uphold the complaint but with actions that differed slightly to that of our investigator. In that decision I said:

“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, it’s my intention to uphold the complaint for broadly the same reasons as the investigator. But the actions I think AIC should take differ slightly and I’ve used this decision to set out why, and how. I’ve focused my comments on what I think is relevant. If I haven’t commented on any specific point, it’s because I don’t believe it’s affected what I think is the right outcome.”

Before I explain why I intend to reach this decision, I think it would be useful for me to set out what I've been able to consider and more importantly, how. It's not in dispute that Mr H's policy included an exclusion for "loss or damage if someone claiming to be a buyer or agent takes possession of your car deceitfully". And it's not in dispute that Mr H's car was stolen by someone claiming to be interested in buying his car. So, based on the above, I think it's reasonable for me to say that, under a strict application of the exclusion, AIC were acting in line with the policy terms and conditions when declining the claim. And, that the policy terms and conditions made this exclusion reasonably clear.

But crucially, in situations such as this one where a business such as AIC is relying on a theft by deception exclusion, I must also be satisfied AIC were fair and reasonable to do so. And our service has an established approach on how we reach this decision. When considering these types of complaints, we draw a distinction between those circumstances in which the customer has voluntarily handed over possession of their car to the thief, and those where the customer intended to retain control over the vehicle. The reason for this is that we're of the view that a strict and literal application of the deception exclusion has the potential to result in unduly harsh outcomes.

So, this is what I've considered. And when doing so, I've thought about Mr H's testimony and the information he provided on the initial claim call, alongside the CCTV footage that had been provided against AIC's comments setting out why they decided to decline the claim. And having done so, I don't think AIC have acted fairly and reasonably when declining it, and I'll explain why.

Having reviewed the CCTV footage and considered Mr H's recollection of events which AIC themselves accept are the same, I think it's clear that Mr H always stayed with the prospective buyer. So, I don't think it would be fair to say that the car was left unattended.

From Mr H's testimony, and the footage available, I think it's clear the prospective buyer requested that Mr H open the bonnet while the car was running so they were able to see the working of the engine. I don't think this was a request that was so out of the norm that Mr H should've been alerted to the prospective buyers' intentions at this point, or that Mr H should've done something differently to what he actually did.

While Mr H did allow the prospective buyer to sit in the front seat of the car while he opened the bonnet, Mr H was stood in front of the car at the time. And it was only when the buyer asked that the car be rolled forward so they could access the back of the car that Mr H did move to the side.

Again, I don't think this is such an unreasonable request that Mr H should've been alerted or done something differently. Nor do I think he should've, in the moment of the request, decide that releasing a handbrake to move a car within its parked space to access was an unreasonable request from the buyer that he should decline.

When Mr H did move to the side, he was still within a metre of the car. And when the car was stolen, the car had to take action to avoid Mr H, with Mr H being close enough to make an obvious attempt to prevent the theft itself, attempting to open the rear door without success.

So, based on the above, I think from the actions Mr H took it was his intention to retain control of the car. And I don't think Mr H took any action that I would deem to be unreasonable, that I don't think another person would've taken in the same situation, that led to the theft of the car. And because of this, I think AIC have acted unfairly when relying on the theft by deception exclusion to decline Mr H's claim.

I know AIC don't, and won't, agree with this point of view. And I want to reassure AIC I have thought about all the points they have put forward, which include their concerns about whether a potential test drive was agreed, and that Mr H could've obtained driving license information from the prospective buyer.

But essentially, these haven't altered my intended decision. It's accepted by AIC that the information Mr H provided on the initial claim call match the theft circumstances shown within the CCTV footage. So, I don't think there is anything that suggests to me Mr H's testimony should be disputed. And Mr H in his own words has confirmed he hadn't agreed to a test drive with the prospective buyer. And that even if this had of been agreed during the sale process, Mr H would have driven the car with the buyer as a passenger.

So, I don't think it's reasonable to expect Mr H to have asked for, or obtained, driving license information from the buyer as he never intended the buyer to drive the car. And even if Mr H had done so, I don't think I can fairly see how this would've prevented the theft from taking place as there is no guarantee this information would've been provided honestly and accurately. Even more so considering the prospective buyer's subsequent conviction for multiple offences of a similar nature.

So, as I don't think AIC have acted fairly when declining the claim, I've then turned to what I think they should do to put things right. And this is where my intended decision differs slightly from the recommendation of our investigator.

Putting things right

When thinking about what AIC should do to put things right, any award or direction I make is intended to place Mr H back in the position he would've been in, had AIC acted fairly in the first place.

Had AIC acted fairly, I don't think they would've relied on the policy exclusion they have. So, to place Mr H back in this position, I think AIC should reassess the claim against the remaining terms and conditions, without consideration of the original exclusion. I note our investigator recommended simple interest be paid on any payment AIC may decide to make following this reassessment. But as I can't speculate on what the outcome of this reassessment will be, this isn't something that is within my remit to direct.

And had AIC acted fairly, I don't think Mr H would've been caused the distress and inconvenience he's suffered by the claim decline.

While I do recognise the theft itself, and the distress this caused, wasn't the fault of AIC, I think it's reasonable to assume Mr H's would've been caused additional distress and inconvenience when he discovered his car had been stolen and that he wasn't going to be receiving a payment through his insurance policy that may allow him to replace the car, or compensate him for the financial loss of the theft, based on an exclusion that AIC were unfair to rely on.

And as I think AIC's reason for the decline was unfair, I think this additional distress and inconvenience Mr H suffered could've been avoided. Our investigator recommended AIC pay Mr H £300 to recognise this, which I note Mr H accepted. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think it is significant enough to recognise the clear and significant impact caused to Mr H, and his mental health, in what would've been a very distressing and upsetting time. But I think it also fairly reflects the fact that AIC weren't responsible for the theft itself, or the emotional distress the actual theft caused. So, the £300 payment is one I intend AIC to pay."

Responses

Mr H accepted my provisional decision. But AIC didn't respond, failing to provide any additional comments. So, I must assume AIC haven't accepted it.

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 see no reason to change my original conclusions and so, I'm upholding the complaint.

I note Mr H has accepted my provisional decision, including my intended directions and compensatory payment. And AIC haven't provided any additional comments, or information, for me to consider that I haven't thought about already when reaching my initial decision.

So, my decision remains that AIC acted unfairly when declining the claim.

Putting things right

For the same reasons listed above, I see no reason to change my intended directions set out within my initial decision. To place Mr H back in the position he should've been, had AIC acted fairly, I think AIC should now reassess his claim against the remaining terms and conditions of the policy he held, without consideration of the exclusion they initially relied upon.

And I think AIC should pay Mr H a total compensatory payment of £300 to recognise how their service created additional distress and inconvenience for Mr H in what would've already been a difficult and upsetting time.

My final decision

For the reasons outlined above, I uphold Mr H's complaint about Advantage Insurance Company Limited and I direct them to take the following action:

- Reassess Mr H's claim against the remaining terms and conditions of his motor insurance policy, not including the exclusion they previously relied upon; and
- Pay Mr H £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 November 2024.

Josh Haskey
Ombudsman