

The complaint

Mr D has complained that his motor insurer, Advantage Insurance Company Limited ('Advantage'), turned down a claim he made on his policy after his car was stolen.

Advantage is the underwriter of this policy i.e., the insurer. During the claim Mr D also dealt with other businesses who act as Advantage's agents. As Advantage has accepted it is accountable for the actions of its agents, in my decision, any reference to Advantage includes the actions of the agents.

What happened

Mr D had a motor insurance policy with Advantage which ended on 24 June 2022. He made a claim on the policy in December 2023 after his car was stolen by a garage who had agreed to sell it for him.

Mr D said he agreed for the garage to take his car and sell it at their premises in June 2022, while his policy with Advantage was still live. The car wasn't selling for a long time but when the garage did sell it in March 2023, they never notified him of the sale. The matter was reported to the police who managed to locate some of the cars sold by the garage. But they told Mr D it wasn't possible to recover his as his car was deemed to have been sold legally by the garage.

Advantage rejected Mr D's claim and said he breached the terms of his policy which doesn't cover him for loss or damage if someone claiming to be an agent takes possession of the car by deception. Mr D wasn't happy about this and complained but Advantage rejected the complaint for the reasons it had already given.

Mr D then brought his complaint to our service. He said he lost out on £28,500 and was still paying £400 per month to lease a car that he no longer has. He said Advantage told him it would pay 89% of the claim on three occasions and he wants it to honour that offer.

Advantage told us that Mr D agreed to let the garage sell his car without meeting anyone in person and simply handed the keys over to two people who came to collect it from him. It added that Mr D cancelled his insurance policy after the garage told him they would insure it instead, but he never asked for confirmation that they did so. It also said under the terms of the policy it wasn't responsible for loss which takes place while the car is in the charge of someone not shown on the certificate of motor insurance. Advantage also said it believed this was a civil dispute between Mr D and the garage.

One of our investigators reviewed the complaint but didn't think it should be upheld. He said Advantage was acting within the terms of its policy and thought that Mr D hadn't taken reasonable steps to protect his car.

Mr D didn't agree and asked for an ombudsman's decision. He said he still had his keys and that he did inspect the garage before his car was taken.

As the matter wasn't resolved it was passed to me for a decision. Before I proceeded with my decision, I asked Advantage for its claims file and Mr D to provide some further information regarding the circumstances surrounding the incident.

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'd like to start by saying how sorry I was to hear about the theft of Mr D's car and appreciate how difficult this experience must have been for him. I also understand that he is still suffering from the consequences of this theft and has outstanding finance on the car which he is still repaying.

Brief background

When Mr D reported the matter to Advantage, he said that in June 2022 the garage got in touch with him after they saw that he was advertising to sell his car. They proposed that they sell his car for him and pay him the price he wanted for it and keep any profit. They arranged a video call during which he could see that it was a large garage with many luxury cars for sale. He also stopped his policy from auto renewing in June 2022 after the garage advised him to do this as they said they would insure the car themselves. The garage collected the car and took it to their premises, but after a few months Mr D started to become concerned as the car wasn't selling. He went to the garage in person in November 2022 to collect the car, but he was convinced to leave it there and told there had been a lot of interest. He said the garage also agreed to pay him £400 for the car to help with his car finance payments and said they would take this off the balance later. Mr D said he agreed, signed some papers and left. By March 2023 the car had still not been sold, and he became concerned again. He was then notified by the finance company that the registered keeper had been changed and said he then reported the car stolen to the police and to the DVLA.

From what I have seen, the police have written to Mr D to confirm that they had arrested two people who were released on bail and that the premises had been closed.

The policy

Mr D's policy includes cover for damage or loss caused by theft. It also contains various exclusions one of which states that there is no cover if someone claiming to be a buyer, or agent takes possession of the car deceitfully. This isn't an unusual exclusion, and we think insurers can rely on such exclusions as long as they are acting fairly and reasonably in doing so. Under "general exceptions" the policy also states that there is no cover for injury, loss, damage or liability that takes place while the car is being driven or in the charge of someone

not shown on the certificate of motor insurance.

Was it fair and reasonable for Advantage to reject the claim?

Advantage told us that it considers this to be a civil dispute. This isn't the reason it gave to Mr D at the time, but I have decided to address it in my decision especially as I do not agree with this argument. I say this because, on balance, I don't think the garage had ever intended on paying Mr D the money for the sale of his car. This is supported by the fact that when they eventually sold the car, they didn't notify Mr D of the sale. Furthermore, it seems Mr D wasn't their only victim, so I think, on balance, the garage wasn't a legitimate business but one which took part in fraudulent activities. And this is further supported by its closure and the police arrests. So, I think it is fair and reasonable for Advantage not to treat this as a civil matter but as though a theft has occurred.

Advantage said that the car wasn't insured by it when the theft took place, but I disagree. I think the incident happened when the car was initially taken by the garage. As I said above, I don't think the garage ever intended on paying Mr D his money, so I don't think it is fair or reasonable to say that the incident happened at a later stage, for example, when the car was "sold" to the new buyer. Advantage said that the first time the vehicle was privately insured was November 2023 even though the registered keeper changed in March 2023, but I don't think this changes the fact that the car was, on balance, taken from Mr D in June 2022 with no intention of returning it or paying him any of the sales proceeds.

Advantage relied on a term in its policy which says that there is no cover if the car is taken by someone acting as an agent who takes the car deceitfully. As I said above I thought the garage wasn't genuine, so I think that it is fair and reasonable to say that it was acting as an agent rather than being a genuine motor trader. Deception isn't defined in the policy; and I think it would be fair and reasonable to apply its ordinary meaning which is to make someone believe something that isn't true. As I already said I don't think the garage ever intended to pay Mr D anything at all and so I think that there was deception involved. I don't think Mr D would disagree with this and he, himself, has said the garage's actions amounted to fraud.

When considering cases where a fraud by deception clause is applied, this service draws a distinction between circumstances in which a consumer voluntarily handed over possession of a vehicle to the "thief" and those where a consumer intended to retain control over a vehicle. Mr D said he still has his keys, but he also accepts that the car was collected by the garage from his home as he wasn't able to drive it over himself at the time. So I think he accepts that he handed the car over to the garage. And I also note that he later visited the garage with the intention of taking the car back but was persuaded not to. For these reasons, on balance, I don't think his intention was to retain control of the car. I think Mr D was deceived into handing it over. And for this reason I think Advantage can rely on the "theft by deception" clause in these very specific circumstances.

As an alternative argument, Advantage said that the policy wouldn't cover Mr D while the car was in the possession of someone who wasn't on the certificate of insurance. But as I think it can fairly rely on the theft by deception clause I don't think I need to consider this further.

For completeness I will also say that I haven't seen anywhere that Advantage offered to pay

89% of the claim. Even if it had, as I think it can fairly rely on the theft by deception exclusion and reject the claim I don't think it has to honour this offer.

I appreciate Mr D will be disappointed with my decision. I understand what an impossible situation this must be for him. He no longer has his car but is still responsible for monthly finance payments without having received any of the money that was paid by the new buyer. But for the reasons I have given above, I don't think that this is something that Advantage, as his former motor insurer, is responsible for under his policy. Though I have decided not to uphold this complaint, I do sincerely hope Mr D is able to find an avenue through which he can recover what is owed to him.

My final decision

For the reasons above, I have decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 June 2025.

Anastasia Serdari
Ombudsman