

The complaint

Miss J complains about how Advantage Insurance Company Limited (Advantage) dealt with a claim under her motor insurance policy following an accident, specifically holding Miss J responsible for the accident and seeking to recover claim costs under the provisions of the Road Traffic Act 1988 (RTA).

References to Advantage in this decision include their agents.

What happened

The following is a summary of events in this case, drawing on the respective views and information provided, when Miss J complained to this Service and when Advantage supplied their business file as part of our investigation of the complaint. Both views are included, even though they differ in some respects.

Miss J took out a motor insurance policy with Advantage in July 2022. When taking out the policy Miss J said she disclosed she didn't own the vehicle covered as it had been lent to her by her then-partner, the legal owner and registered keeper. (Advantage say Miss J recorded she was the registered owner and keeper when taking out the policy). Miss J was the only driver covered under the policy. Miss J and her partner separated, following which Miss J said the vehicle was taken from her home without her knowledge at the beginning of September 2022.

Miss J believed the vehicle was taken either by her former partner or someone acting on his behalf. As she wasn't the legal owner of the vehicle, Miss J didn't think she could make a claim for the loss of the vehicle, as she didn't believe it had been stolen by a third party, and she didn't report the incident to the police. Miss J waited to see if her former partner contacted her, so didn't immediately cancel the policy. When he didn't contact her, she cancelled the policy, in mid-September 2022, as she no longer had use of the vehicle. Advantage say she cancelled the policy because the vehicle was no longer working.

However, the vehicle was involved in an accident, shortly after it was taken from Miss J's property, in which it was in collision with two other vehicles. Following the incident, Advantage wrote to Miss J to say they'd been contacted by a third party insurer holding them liable for the accident, saying the driver of the vehicle insured by Miss J lost control while racing another vehicle. Advantage asked Miss J to contact them to say who she thought was driving (February 2023). Miss J said she did not know, though it may have been her former partner or someone acting for him. Advantage subsequently (October 2023) told Miss J an injury claim had been made under her policy, and they were accepting liability for the incident (November 2023).

Advantage contacted Miss J again in February 2025, asking her to say why she didn't report her vehicle being stolen and saying she hadn't cooperated with them. Advantage told Miss J they held her liable for their outlay to the third party involved in the collision (£17,733) under the provisions of Section 152 of the RTA. Miss J disputed this, saying she didn't cause or permit anyone to use the vehicle, so she wasn't responsible for Advantage's outlay. The dispute continued, so Miss J complained to Advantage, saying she'd had legal advice Advantage couldn't pursue her for their outlay under the RTA.

In their final response, issued in March 2025, Advantage didn't uphold the complaint. They said they'd requested reimbursement of their outlay on the claim in January 2025. While appreciating what Miss J said about the vehicle likely to have been taken by her former partner (not stolen) it was her responsibility to tell them she was no longer in possession of the vehicle. As the vehicle had been taken and involved in an accident and she didn't cooperate in providing the full contact details of the driver (her former partner), she was liable for the costs of the claim. Advantage referred to the policy terms and conditions covering Miss J's legal obligations. Advantage also didn't uphold a separate element of complaint about how Miss J had been spoken to in the conversation with the agent in February 2025.

Unhappy at Advantage's final response, Miss J then complained to this Service. She maintained she didn't cause or permit anyone to drive the vehicle at the time of the accident, nor did she know who was driving at the time. So, she wasn't liable for Advantage's outlay under the RTA. She wanted Advantage to close the claim and remove her being held responsible for the incident and their outlay. She also wanted compensation for the inconvenience she'd been caused.

Our investigator didn't uphold the complaint, concluding Advantage acted fairly in settling the third party claim in line with Section 151 of the RTA and seeking recovery of their outlay from Miss J (as she didn't provide details of the driver – she thought – was driving at the time of the accident.) As Miss J didn't report the vehicle as having been stolen, she'd allowed the vehicle to be driven without insurance. Her reluctance to provide any further details of her former partner other than his name prevented Advantage from seeking recovery of their costs from anyone other than Miss J. The policy terms meant no cover was provided where the vehicle was being driven by someone not shown on the Certificate of Insurance. The terms of the policy also provided for Advantage to recover from Miss J, or the driver at the time of an accident, costs incurred by Advantage where cover wasn't provided.

Miss J strongly disagreed with the investigator's view, saying it was based on an inaccurate understanding of the facts of the case, and asked that an ombudsman consider the complaint. Specifically, she said she learnt the accident happened on the same day she noticed her vehicle had been taken, whilst she was away from the property. She had no reason to believe the vehicle had been stolen and couldn't discount the possibility it was taken back by her former partner or someone acting on his behalf (and possibly collected by means of a tow truck. She was neither the legal owner nor registered keeper of the vehicle, being permitted temporary use of the vehicle by the legal owner and registered keeper.

She also disputed Advantage being able to seek recovery of their outlay under the RTA if they hadn't established she caused or permitted the use of the vehicle by a third party – neither of which she had done. She maintained her view she didn't know who had taken the vehicle, nor that she had allowed the vehicle to be driven whilst uninsured. Nor had she said she understood the driver to have cover under 'driving other cars'. And she wasn't reluctant to provide details for her former partner, rather she was unable. Advantage should contact the police to establish who was driving the vehicle at the time of the accident.

So, the complaint has been passed to me to consider.

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.

My role here is to decide whether Advantage have acted fairly towards Miss J.

The key issue in Miss J's complaint is whether it is fair and reasonable for Advantage to seek recovery of their outlay under the claim brought by the third party involved in the collision. Advantage say they are entitled to do so under the provisions of the RTA and the terms of the policy taken out by Miss J. Miss J disputes this, saying she didn't know who was driving the vehicle at the time of the accident and that she hadn't caused or allowed the vehicle to be driven by someone else.

In considering the complaint I've noted that Miss J and Advantage disagree on several key points at issue, as set out earlier. I've therefore had to reach my conclusions based on what I think are the more persuasive points made. Having done so, I've concluded Advantage haven't acted unfairly or unreasonably in seeking to recover their outlay from Miss J. I know this will be very disappointing to Miss J, so I'll set out why I've come to this conclusion.

What isn't in dispute is that the vehicle was involved in an accident on the day Miss J noticed it had been taken from her property. From what I've seen, the vehicle was responsible for the accident. Advantage say they attempted to obtain a police report to confirm the circumstances of what happened and whether the vehicle was stolen or who was driving it. But the police responded to say there were no reports available or insufficient evidence to support that a crime had been committed.

Advantage also say there was no other insurance covering the vehicle recorded on the Motor Insurance Database (MID) at the time of the accident, meaning they were obliged to settle the claim from the third party insurer. They've provided evidence supporting the claim, which included vehicle repair costs and personal injury. Given the circumstances, I think Advantage were obliged to settle the claim under the provisions of the RTA, as the insurer of the vehicle involved in an accident (Advantage refer to case law supporting this position).

From this point, the key issue then becomes one of whether it is reasonable for Advantage to pursue recovery of their outlay on the third party claim from Miss J.

Advantage say that where a vehicle is involved in an accident where the driver isn't insured – which is the case here as Miss J was the only driver insured to drive the vehicle, and she wasn't driving the vehicle at the time of the accident – then it is usually where the vehicle has been stolen. In those circumstances, the insurer covers the costs of the claim and doesn't seek to recover those costs from the policyholder.

But in this case, the vehicle wasn't reported by Miss J as stolen, as she thought the vehicle may have been taken back by the legal owner and keeper (her former partner) or someone acting on their behalf. Miss J says she didn't know who was driving at the time of the accident. But in bringing her complaint to this Service she states she believes the former partner, or someone sent by him had collected the vehicle. And that she didn't know whether he would return the vehicle to her, which is why she didn't cancel the policy immediately.

As Miss J didn't believe the vehicle was stolen (and didn't report it as stolen) then as the vehicle was being driven by someone not insured to drive it (under Miss J's policy or any other that could be identified) then Advantage say the policy terms provide for no cover to be provided. And that further, the policy terms provide for Advantage to recover costs they are obliged to meet under the RTA.

Under the policy terms and conditions, specifically the *General Exceptions* section, there's the following statement:

"Your policy doesn't cover the following:

1. *Use of your car*

You are not covered for any injury, loss, damage or liability that takes place while your car is being:

- *Used for racing or driving competitively against another driver on a public highway*
- *Driven by, or in the charge of, someone not shown on your Certificate of Motor Insurance...*

I think this makes it clear that cover wouldn't be provided in the circumstances of the accident.

Advantage also refer to the following policy terms with respect to recovering costs they are legally entitled to pay under the RTA:

"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 the 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."

I think this makes it clear that where Advantage settle a claim under the RTA ('in settlement') then they are entitled to recover the sums paid from the policyholder or the driver.

In the circumstances of this case, Miss J says she didn't cause or permit the vehicle to be driven. However, believing it to have been taken back by her former partner (or someone acting for them) and not reporting the vehicle as being stolen, I think it reasonable to conclude she cause or permit the vehicle to be driven (by her former partner, as she believed) by someone not insured to drive it. I've also noted that Advantage's case notes record a conversation(s) with Miss J which say she provided the name of the driver of the vehicle at the time of the accident (former partner) and was driving under 'driving other cars' cover - although I recognise what she's told us about not knowing who was driving at the time of the accident and disputes saying the driver was driving under 'driving other cars'.

The policy terms referred to by Advantage in their final response are as follows, under a heading *Your Legal Obligations*:

"If you don't take reasonable care to answer all questions fully and accurately or if you deliberately make a false statement, there could be serious consequences. For example, depending on the circumstances, your insurer might be entitled to treat your insurance cover and that of every other person named on your policy as invalid. This could also mean that some or all of a claim may not be paid and you may have to make a payment to a third party (for example another driver or person involved in an incident) that's not covered by this insurance."

Given the points set out above, then it could have been the case Advantage could have pursued the former partner of Miss J for recovery of the costs of the claim, given what Miss J thought was his taking back the vehicle on the day she noticed it missing (and was subsequently involved in an accident). Miss J would only provide a name to Advantage and not further contact details, so they weren't able to pursue this potential recovery route. I don't think it unreasonable for Advantage to conclude Miss J wasn't co-operating sufficiently to enable them to pursue this option, leaving them with no other party from which to seek recovery other than Miss J.

Taking all these points into account, I've concluded Advantage haven't acted unfairly or unreasonably in their handling of the claim, and in the specific circumstances of the case, seeking recovery of their outlay under the RTA from Miss J.

My final decision

For the reasons set out above, it's my final decision not to uphold Miss J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 14 August 2025.

Paul King
Ombudsman