

complaint

Mr G complains about Advantage Insurance Company Limited, trading as Hastings Direct's handling of his claim after his car was stolen.

background

Mr G advertised his car for sale in January 2017. He was contacted by someone asking to look at his car one evening. They met on Mr G's driveway where his car was parked. They stood together outside it and revved the engine by putting their foot on the accelerator. But the person then distracted Mr G, got in the car and drove off at speed. Mr G called the police straight away to report what had happened.

Mr G made a claim on his car insurance with Hastings Direct, but it refused it. It referred to a clause in Mr G's policy which said he wasn't covered for '*Loss of or damage to your car where possession of it is gained by deception of someone who claims to be a buyer or agent.*'

our investigator's opinion

Our investigator didn't think it was unreasonable for Hastings Direct to reject Mr G's claim. She said Mr G was given all the relevant information about the policy and what it covered, and this set out the clause Hastings Direct relied on. She acknowledged Mr G's feelings about the customer service he'd received in dealing with his claim, but didn't think this was below the expected standard. Hastings Direct had offered Mr G £50 in compensation for the poor wording in its response letter and the investigator thought this was fair.

Mr G questioned why he hadn't been offered the remaining part of his policy premium back and whether he was entitled to his no claims bonus. He still hadn't received a formal response or explanation from Hastings Direct. He said the tactics of insurance companies like this could contribute to the rising costs of insurance. He's been told by the police that there have been other similar thefts in his area. He asked for his complaint to be reviewed by an ombudsman.

my provisional decision

After considering all the evidence and arguments I issued my provisional decision on this complaint in October 2017. I thought it should be upheld. I said:

I think this is a finely balanced situation. I think the wording of Hastings Direct's policy booklet is clear that cover wouldn't be provided for theft where possession is gained by the deception of someone claiming to be a buyer. Mr G has said that he wasn't aware of this exclusion, and wouldn't have ever thought it would apply to him. But what I've looked at here is whether it's fair of Hastings Direct to rely on this exclusion in rejecting Mr G's claim for the theft of his car.

the refusal of the claim

I've thought carefully about the particular circumstances in which Mr G's car was stolen. And I don't think this is a scenario where Mr G voluntarily handed over possession of his car to the thief.

Mr G had started the engine so that the person could listen to it revving. He was standing next to them while they stood outside of the car and used their foot to press the accelerator. I think Mr G fully intended in retaining control of his car and he was in close proximity to the person to show he hadn't handed possession over to them. They needed to distract Mr G's attention while he was still standing next to them, so they could get into the car and lock the doors. Mr G tried to prevent the car being taken, but couldn't without putting himself in danger.

So I think this theft was caused by distracting Mr G to give an opportunity to steal the car. I'm satisfied that he didn't voluntarily hand over the control of his car to the thief. He offered to drive the potential buyer to the garage to look at the car in a better light which suggests he wouldn't have handed control over to them.

So in the specific circumstances here, I think the decision to reject his theft claim was unfair. And it's because of this that I think Hastings Direct should deal with Mr G's claim under the remaining terms of his insurance.

the customer service

I can understand why Mr G feels Hastings Direct responded poorly to his complaint, and in a way that lacked understanding of his situation. Hastings Direct acknowledged its response letter was badly worded and contained mistakes about some of the details. This is why it offered Mr G £50 in compensation. And for this specific part of his complaint, I think that's reasonable.

But there are other aspects to the overall service Mr G experienced. His car was stolen in January 2017. He was selling it so it's unlikely he intended to replace it. He didn't have a need for the insurance to carry on after it was stolen and Hastings Direct had refused his claim. Mr G referred to this in his letter in March 2017 where he said he believed he was owed the balance of the premium he'd paid. He also asked for confirmation of his no claims bonus.

But I haven't seen that these points were responded to. Hastings Direct told our investigator the policy was still in place as Mr G had never asked for it not to be, when that's not the case. It also said his protected years no of claims bonus still applied, but I haven't seen that it's written to Mr G directly about this.

Because I think Hastings Direct should consider Mr G's claim, his insurance premium would still apply. And it may be that this has an effect on his no claims bonus. But I do think Hastings Direct could have responded to, or at least acknowledged, Mr G's requests before our involvement. So I think it should pay Mr G a further £100 in recognition of this.

So my provisional decision was that Hastings Direct should: consider Mr G's theft claim under the remaining terms of his insurance; send him a copy of it's final response letter; and pay Mr G a total of £150 in compensation for the poor wording of the refusal letter and for not responding to the issues of the premium and no claims bonus.

the responses

Hastings Direct strongly disagreed that it should consider Mr G's claim. It said the description of the theft could only be described as 'deception' – a significant exclusion under the policy. It didn't think I'd reached a fair decision.

Mr G accepted my provisional decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm sorry that Hastings Direct is surprised by my decision and doesn't believe it to be fair. When reaching it, I took into account the specific circumstances of what happened to Mr G – this included what he told us and how he described the incident at the time it happened.

And, having reviewed all of this again, my findings remain that I think it was distraction that facilitated the theft, as this gave rise to a small window of opportunity to steal the car. I don't think Mr G was deceived into handing over the control of his car. So I think relying on the exclusion under this particular set of circumstances would result in an unduly harsh outcome for Mr G.

my final decision

My decision is that I uphold this complaint. I require Advantage Insurance Company Limited, trading as Hastings Direct, to:

- consider Mr G's theft claim under the remaining terms of his insurance;
- send Mr G a copy of it's final response letter;
- pay Mr G a total of £150 in compensation for the poor wording of the refusal letter and for not responding to the issues of the premium and no claims bonus. This is on the basis that the £50 cheque previously sent to Mr G was returned uncashed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 8 January 2018.

Cathy Bovan
ombudsman