

complaint

Miss N complained that when she called for help under her roadside assistance policy with Ageas Insurance Limited, the operator acting on their behalf damaged her car.

background

Miss N called for assistance when she locked her keys in her car by mistake. The operator who attended on Ageas' behalf managed to open her car, but damaged it in doing so.

Miss N complained to Ageas. They didn't dispute that the operator had caused the damage. But they said that Miss N had authorised the forced entry, and that this always carried a risk of damage to a car. They didn't think that they were liable for the damage because the operator hadn't been negligent. Miss N remained unhappy so she brought her complaint to us.

The adjudicator recommended that her complaint should be upheld. He thought that the damage wouldn't have happened if the operator had opened Miss N's car correctly. He recommended that Ageas should pay to repair Miss N's car and pay her compensation of £100 for her trouble and upset.

Ageas didn't agree and so her complaint has been passed to me to decide.

my findings

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

Ageas say that Miss N signed the operator's disclaimer of liability for any damage to her car resulting from forced entry, and that they are not liable unless the operator was negligent. They don't think that he was.

Miss N accepts that she signed something, but she says that it was after the operator had opened her car, not before. She said that it was raining so she had taken shelter while she waited for the operator to attend, and that when returned to her car the operator was there and had already opened it. She said that she got into her car and only realised when she got home that her door was damaged and it was letting in water.

Ageas said that the operator would not have opened the car without Miss N's consent, but they haven't provided any evidence from the operator himself about what happened. They did send us the operator's vehicle tracking records and phone records. They say that these records show that the operator only opened Miss N's car after she arrived.

I see that the records do show that Miss N was not at her car at 11.16 am when the operator was there, but that at 11.25 am Miss N was in her car and the situation was resolved. However the records don't show when the operator actually opened the car, so I don't think they support Ageas' position. I have weighed up the conflicting evidence; Miss N's recollections, and the evidence which Ageas has sent. On balance, I prefer Miss N's recollections. So I'm not persuaded that Miss N signed the disclaimer before the operator opened her car. Her policy allowed her to take the option of being towed home instead, and she might have chosen that option if the operator had warned her of the risk of damage to her car by forced entry. But I don't think she was given that opportunity.

Ageas said that the damage to Miss N's car was unavoidable, because Miss N needed urgent access to her car. But there's no evidence that Miss N did say that. And it's unlikely that she did, since she was not far from home and did not have to be anywhere urgently. And in any event, even if access to Miss N's car were unavoidable, it doesn't follow that damage was also unavoidable.

Miss N's policy states that Ageas are not responsible for any damage caused by their operator. The disclaimer states that they are not responsible unless the operator has been negligent. Ageas had obtained an expert report which concluded that any forcible entry to a car carried a risk of causing damage no matter how careful the operator was; things such as temperature could make a difference to plastic items, making them less or more pliable. So Ageas said that the operator hadn't been negligent. However, although I accept that damage is possible on forcible entry, I'm not persuaded by the expert report. This is because its author is making a general statement, not commenting from knowledge of what the operator in this particular case actually did. The report's author does not know exactly how the operator opened Miss N's car and merely assumes possible options. So I don't consider that the report supports Ageas' position that there was no operator negligence in this case. I can see from the photographs Miss N has sent that there is in particular significant damage to the door trim; a large part of it has been broken off. And on balance I consider that the operator ought reasonably to have been able to open her car door without damaging her car as he did. So I think that the service provided by Ageas' operator fell below a reasonable standard and that Ageas should pay for her car's repair. And, as the situation has caused Miss N some inconvenience, I think that an award of £100 fairly compensates her for this.

my final decision

For the reasons I've given above it's my final decision that I uphold this complaint. I require Ageas Insurance Limited to do the following:

- Pay to repair the damage to Miss N's car resulting from the forced entry
- Pay Miss N £100 in compensation for the inconvenience Ageas have caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 15 February 2016.

Rosslyn Scott
ombudsman