

The complaint

Miss D complains that Advantage Insurance Company Limited's (Advantage) declined to pay her hire car costs and destroyed belongings she'd left in her car following an accident she was involved in, under her motor insurance policy.

What happened

Miss D was involved in a car accident in October 2022. She contacted Advantage to make a claim. She says she continued to drive her car. But was subsequently told by the police it wasn't roadworthy. Her car was subsequently taken to Advantage's garage, but she says no courtesy car was available. She says she was told she could arrange her own car hire, and Advantage would pay for this. Miss D arranged a hire car but says Advantage declined to pay.

After an assessment Miss D's car was considered to be a total loss. It was then taken to a salvage agent some distance away. She says the personal items left in her car were worth around £3,000. But these were destroyed by the salvage agent. Miss D wants Advantage to pay for the cost of her hire car and reimburse her for the personal items its agent destroyed.

In its final complaint response dated 18 November 2022 Advantage apologised for some issues in providing a courtesy car to Miss D. But it says it has no record it agreed to reimburse her hire car costs. It offered £100 as an apology for the service it provided. In its response dated 7 February 2023 Advantage says it has reviewed Miss D's concerns about the hire car. But it maintained its decision that no agreement to pay these costs was made.

Advantage wrote to Miss D in October 2023 responding to her concerns about the personal items she'd now lost. It says the items had to be collected in person because they were contaminated with mould. It says its salvage agent contacted Miss D multiple times between November 2022 and March 2023. Several appointments were made for her to collect the items. But it says she didn't do so. It says it couldn't keep the items indefinitely. Due to the mould, it arranged for the items to be destroyed in August.

Advantage says its agent gave Miss D plenty of opportunities to collect her belongings. It didn't offer to compensate her for this loss.

Miss D didn't think she'd been treated fairly and referred the matter to our service. Our investigator didn't uphold her complaint. She says there are no records that show Advantage agreed to pay Miss D's hire car costs. And says its policy terms don't provide cover for this. She also thought Miss D had been given plenty of time to arrange collection of her belongings.

Our investigator says Advantage has shown Miss D altered an email it sent to her. This was to make it look like it agreed to pay her car hire costs. She says its decision to decline the claim in full and to recover its costs from Miss D was fair in light of these circumstances.

Miss D didn't agree and asked for an ombudsman to consider her complaint.

It has been passed to me to decide.

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'm not upholding this complaint. Let me explain.

Regarding the provision of a replacement car Miss D's policy terms and conditions say:

"About the replacement car service

- *You won't be eligible for a replacement car if your Car is stolen or considered to be a Total Loss/write-off*
- *The replacement car service is only available if you are making a claim under Section 1 or 2 of the policy and the repair is being done by your Insurer's Nominated Repairer*
- *The replacement car will be provided by your Insurer's Nominated Repairer*
- *The service is only available while your Car is being repaired*
- *The replacement car will usually be a group A vehicle, such as a [small hatchback]*
- *The replacement car will be automatically insured, at no additional cost, under this Policy. This cover is subject to your Insurer's terms and conditions and normal Policy terms will apply*
- *You'll be responsible for the replacement car and for any charges or fines incurred during the time you use it, including fuel costs, parking fines, motoring offences, fixed penalties and any congestion or toll charges."*

And:

"Drivers with optional substitute vehicle cover

If you bought substitute vehicle cover as an optional extra when you took out your Policy, you'll be able to make a claim for the cost of a hire car. This only applies if your Car is declared a Total Loss after an accident that was your fault, or after fire or attempted theft. Your payment summary will show whether you've bought this cover and you can find full details in the optional additional products document."

Based on this information Miss D was entitled to a replacement car if her car was being repaired by Advantage's approved repairer. Her car wasn't repaired it was considered a total loss. A replacement car isn't provided in these circumstances.

I can see that Miss D has the optional substitute vehicle cover. This cover applies if she's at fault for the damage claim and her car is a total loss. Her car is a total loss. But referring to the claim records the damage occurred as a result of a "*hit and run*" incident. Based on this evidence there was no cover for hire car costs.

I've read the claim records in full and listened to the call recordings Advantage provided. I can't see that it agreed to cover the cost of Miss D's hire car, either before or after this was arranged. I acknowledge her recollection of what was discussed differs. But there is no evidence to support this. And her policy doesn't provide cover for her hire car costs in these circumstances.

I can see that Advantage asked Miss D to provide the communication she'd received from it confirming it would cover her hire costs. She responded with an email Advantage sent to her that says:

“Please use this email to reply with the invoices and we Happy to refund you.”

Advantage says this is an altered version of the email it sent to Miss D in November 2022 that actually says:

“Please use this email to reply with the invoices for the hire vehicle.”

Advantage says Miss D has deliberately altered its email to try and benefit from a payment she isn't due under her policy cover. It refers to the following policy terms:

“7. Fraud

You must not act in a fraudulent manner. If you, or anyone acting for you:

- Knowingly provide information to us that is not true*
- Mislead us in any way, including about who is the main user of the Car, in order to get insurance from us, obtain more favourable terms or reduce your premium*
- Make a claim under the Policy knowing it to be false or fraudulently exaggerated in any respect*
- Submit a document in support of a policy or claim knowing the document to be forged or false in any respect*
- Make a claim for any loss or damage caused by your wilful act or with your knowledge.*

Then, depending on the circumstances:

- Your Insurer may be entitled to refuse responsibility for the claim to which the alleged fraud or falsehood relates. They may also be entitled to cancel or void the Policy without refunding your premium.”*

And:

“Costs you may have to pay:

.. If your Insurer doesn't accept your claim, you may have to pay any costs already incurred. These may include (but are not limited to) engineers' fees, vehicle recovery and storage charges.”

Once Advantage identified the email Miss D provided had been altered, it declined to pay her claim and confirmed it would pursue her for its costs. I don't think it behaved unfairly in doing so. The email Miss D provided has clearly been altered. And I can't see that she provided a reasonable explanation for this.

I've thought about Miss D's claim that there was a considerable list of items in her car when it was collected and taken to Advantage's approved garage. This includes two bags worth £1,700, a coat worth £500, earrings and a necklace worth £440 in addition to numerous other items including eight bottles of alcohol. I note Miss D's comments that these items were worth around £3,000.

I note that Miss D hasn't provided evidence to show she owned these items or that they were in her car when it was collected.

Miss D's car wasn't recovered to the garage immediately after the claim damage was reported. This happened some days later after she had been told not to drive it anymore by the police. I think a reasonable course of action would be to remove any items of value from the car before it was recovered. I acknowledge Miss D's comments that she was told by the garage not to. But I have no evidence to support this. I think a reasonable person would've removed any items of value before the car was recovered to the garage. Especially clothing,

jewellery, and shopping worth a considerable amount of money.

Miss D says she wasn't told when her car was being moved to a salvage yard. This was much further away than the garage and would've involved a long drive to collect her belongings. We asked Advantage why it didn't tell Miss D her car was being moved. It responded to say its garage had tried to call her but received no response.

I've read the records provided by Advantage's salvage agent. This shows numerous contacts were made between November 2022 and May 2023. A number of appointments were agreed for Miss D to collect her belongings. The notes say the items were contaminated by mould so couldn't be forward to her and had to be collected. The items were eventually destroyed in August.

Based on this evidence I don't think Advantage, or its agents acted unfairly here. Miss D hasn't provided receipts or photos showing any of the items left in her car. She could reasonably have removed any items before the car was collected. Numerous opportunities were given over around a six-month period to allow Miss D to collect her belongings. So, I think after around nine months the items were reasonably disposed of.

I've thought about the initial period when Miss D's car was at Advantage's garage, and no courtesy car was available. No repairs were authorised, and the car was eventually determined to be a total loss. But it took several weeks to get to this point. I note Advantage's comments that it would look to compensate Miss D for the lack of a courtesy car in these circumstances. But as it says she breached her contract by attempting to obtain a payment fraudulently - it isn't prepared to pay any more than the £100 compensation its already paid. Based on the evidence I've seen, I don't think this is unreasonable.

Having considered all of this I don't think Advantage treated Miss D unfairly when relying on its policy terms to decline to pay her hire car costs or for the belongings she left in her car. So, I can't reasonably ask it to do anymore.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 12 April 2024.

Mike Waldron
Ombudsman