

## The complaint

Ms D has complained that Advantage Insurance Company Limited unreasonably and unfairly declined to pay her theft claim of her car under her motor policy.

Ms D is represented by an independent loss adjuster who I shall call Mr C.

## What happened

Ms D's car was stolen from her driveway on 20 March 2023. She last used her car on 17 March 2023 as from then over the weekend she and her partner were using his car which is normally parked behind hers on the driveway.

Mrs D realised earlier on Monday that she couldn't find her car key and so made arrangements to work from home and get a specialist motor vehicle key replacement service to sort out a new car key. Her partner arrived home from work on the Monday, parked his car as usual behind hers effectively blocking it in as it had been all weekend. However later that evening he had to go out again and when he returned about a half an hour later Ms D's car had been stolen.

So, Ms D made a claim to Advantage. It investigated the claim and found out she had lost her other car key about 18 months earlier but did nothing about replacing it. During the course of its investigations, Ms D told Advantage her back door was often left unlocked when she was in the house so that the dog could go out into the garden. Advantage refused to pay her claim because it felt she hadn't taken enough care to safeguard her car once she was aware that the remaining key was missing.

As Advantage wouldn't change its stance Ms D brought her complaint to us. The investigator felt it should be upheld and that Advantage should reassess her claim under the remaining terms and conditions of the policy.

Advantage disagreed so Ms D's complaint was passed to me to decide.

I issued a provisional decision on 2 April 2023, and I said the following:

'Having done so, I'm intending to uphold this complaint for further issues than those of the investigator. I'll now explain why.

There's no question or indeed evidence that Ms D was in any way involved with the theft of her car. There's also no question or evidence that possibly Mrs D left her key in the car either.

Advantage's agent who interviewed her said *'based on the account given by our policyholder, this appears to be a genuine claim, albeit without absolute clarity as to where the key for the insured vehicle has gone.'*

Further Ms D's evidence is that she last used her car on her return from work on the evening of Friday 17 March 2023. It was there on Saturday, Sunday, and most of Monday until it was stolen sometime between 7pm and 7.20pm on Monday evening.

So, looking at the policy it says the following under the General Conditions:

*'3. Caring for your Car*

*You, or any person in charge of your Car, must protect it from damage or loss.*

- Alarms, immobilisers and tracking devices must be on and working when your Car is left unattended.*
- Your Car must be fully locked and secured and any Keys that unlock your Car must be removed when it's left unattended or unoccupied.'*

There is no evidence to show me Ms D didn't adhere to these policy conditions unlike what Advantage have alleged given this precise policy wording. However, there is an overarching duty to keep your car safe but that must be interpreted reasonably in the absence of any other policy conditions particularising exactly the duties the policyholder must perform to keep the car safe.

Instead, what happened is that Ms D's remaining key to her car went missing. Her representative, Mr C, explained what is most likely to have happened in his view. As is her usual routine on returning from work on the Friday evening Ms D, who lives with her partner, child and dog, parked her car first on the driveway leaving room for her partner to park behind her, thereby blocking her car in. They both together normally used her partner's car over the weekend, leaving hers parked.

Her housekeys are on the same ring as her car keys which is a very common practice, so I don't find that unusual as it's easier to keep track of one bunch of keys instead of two. They went shopping on the Saturday and she remembers she locked her front door and put her keys (therefore including her car keys) in her pocket. Her partner had been the one to strap their child into the car seat.

On their return, her partner opened the front door (I assume with his keys) and brought in the shopping whilst Ms D dealt with unstrapping their child from the car seat.

She then didn't notice or think about her keys until Monday morning when she needed to go to work, and she couldn't find them. Her first thought was simply they were lost in the house given her child was a toddler and possibly given his habit of moving things about, he had moved them somewhere.

She had lost her other key to her car some 18 months earlier, (which I shall come back to later) so she knew she didn't have a spare key. So, from her perspective the only thing she could do was work from home and get a specialist motor vehicle key replacement service to sort out another key. But that appointment couldn't happen until Tuesday.

Her partner returned home from his work as normal that evening and her car was still there as he parked behind it. He had to go out again in the evening for about half an hour and it was during that limited time only when her car was stolen.

I consider this is important as it negates Advantage's view that anyone could have stolen her key through the back door which Ms D said was often left unlocked, to let the dog out. Her car wasn't blocked in for the entire of the working day on Monday regardless and hadn't been stolen. Also, I can't see that if Ms D couldn't find her key

on Monday, an opportunistic thief would have gained entry to her house and miraculously found the key plus stolen the car all within that 20 - 30 minutes time span only. More so given Ms D, her child and dog were in the house. That seems neither a rational nor a reasonable assumption to me.

Far more importantly, Ms D said CCTV from neighbours showed two youths come up on a moped, one opened the car and effectively then stole it. Her representative believes given the speed and ease of the car being stolen, it was obvious they had a key. I consider this is also important. Advantage makes no mention of this CCTV evidence either.

So, then the question is how on earth did they get the key (since she only had one) when she had it and her house key on Saturday. I find Ms D's representative's hypotheses persuasive and more so his conclusions that it does appear Advantage didn't establish what happened in the way it should have before repudiating Ms D's claim. Instead, it postulated various issues which when it couldn't come to any conclusion as to which was more likely to have happened, it merely decided she didn't keep her car safe contrary to the policy conditions and so it declined her claim. But there aren't any conditions in the policy which Ms D has breached as her car was locked and the key removed as the policy required. So, I consider Advantage itself didn't take adequate care with the circumstances of what happened and instead repudiated the claim before more cogent thought was given to the burden of proof it had to show for repudiating this claim, given Ms D had discharged her burden of proof that her car was stolen.

Mr C, on more careful questioning of Ms D, believes it was more likely her keys fell out of her pocket on Saturday on their arrival home from shopping, when she was unstrapping her child from the car seat in her partner's car, and they most likely fell onto the driveway or frontage of her house. Ms D said her jacket pockets didn't have a zip or fastening. The keys were then found by the thieves, who waited for a time for when her car wasn't blocked in by her partner's car to then steal it. This feels far more likely to me. And on that Monday evening (they could have been in work or school during the day or were waiting until it was darker) the right opportunity came along, and the thieves successfully stole Ms D's car.

Ms D did indeed lose her other key to her car about 18 months previously. However, it's believed her sister's child who was then a toddler had got into the habit of putting things in the bin and had in fact binned Ms D's other key when he was visiting, which had gone out in the rubbish before Ms D and her sister had worked things out. So, Ms D was of the view her first key had sadly gone to landfill or been incinerated. Consequently, it's very unlikely to me that this missing other key had any relevance to this theft at all.

In the court case *Sofi -v- Prudential Assurance Company Limited* (1990) the notion of the insured's perception of the risk was considered at some length. Essentially if the insured (which would be Ms D in this case) didn't consider that there was a risk involved in what had occurred, then it's arguable that she didn't act recklessly. Basically, Ms D had to have recognised there was a risk and have taken no steps to avert that risk in order to be considered to have acted recklessly.

From Ms D's account the risk she perceived was only that her key was lost most likely in the house and that she couldn't get into her locked car. She didn't think her car was at risk as it was locked. She didn't think her key had been stolen either, merely that it was lost in her house given she had a toddler who liked to move things about and hide them. So, I don't consider there is enough to show Ms D was reckless

here. Plus given the CCTV evidence it's clear to me in all probability the thieves found the key earlier in the weekend on the ground in front of her house and waited for the right opportunity to steal Ms D's car.

Therefore, I consider Advantage should now pay Ms D's claim with interest from a period of one month following the theft on the basis that Ms D hadn't breached any policy terms as alleged.

Ms D also suffered consequential losses as a result of the theft, and indeed as a result of Advantage declining to pay her claim.

Mr C explained that Ms D's car was still on finance which she continued to pay. She had a two-year service package with the car sales outlet from where she originally bought her car which cost £249.00 which is non-refundable. She lost out on the second service so effectively lost £124.09. I consider this is a reasonable consequential loss for Advantage to refund.

She initially rented a car costing £380.36, which I also consider is a reasonable consequential loss given our new stance on loss of use. Interest should be added from the date Ms D incurred these hire charges. Then her employer gave her access to a company car when another member of staff was on leave which is also a very reasonable mitigation of her losses.

Then there was a period where she needed to use busses and taxis, but she hasn't kept receipts of this, and she feels these costs were relatively low in any event so she's not claiming for these. I consider that is a reasonable approach given the losses were minor and no receipts were kept.

Her family then came together and bought a temporary car in a family member's name to which she was a named driver. The family member will retain the car after Ms D is finished with it. Mr C said Ms D was claiming £453.60 of the costs of the car. He said the total cost was £2,653.60 but the actual cost of the car was £2,200. It appears these extra costs were buyer fees, virtual bid fees, VAT etc. However, I don't consider it's reasonable for Advantage to refund this as it pertains to the cost of the car in any event which the family member will have the benefit of afterwards.

Prior to this she also used her brother's car and he had to add her to the insurance which cost him £476.38. I consider this is a reasonable item for Advantage to refund on the basis it was further mitigating her overall loss of use. Again, interest should be added from when these charges were incurred.

Child car seats are covered under this policy up to a maximum of £300.00. Mr C said Ms D said her car seat cost £250.00 so therefore I consider this should be covered. Ms D has also claimed the cost of the loss of a pram which cost her £453.98. The policy mentions car seats separately from personal belongings where the cap is also £300.00 so ostensibly, I consider Ms D would be entitled to claim for the max of £300 towards her pram additionally provided that isn't already covered by her household insurance policy. Again, interest should be added.

Mr C also said that he will be charging Ms D 10% plus VAT of the loss that he recovers for Ms D. However, there is no fee charged to any consumer to bring their complaint to this service. Therefore, any costs in doing so such as those that will be charged by Mr C remain the responsibility of Ms D. Mr C acknowledged this and instead asked that I consider a compensation payment of £500 instead.

Under the methodology of how we assess what a business did wrong as is the case here, we also consider the impact on the consumer of this and will award compensation for the impact of what the business did or didn't do rather than any associated costs any consumer might incur in getting help to bring their complaint to us.

I do consider Advantage unreasonably refused to consider and pay Ms D's claim. I consider that meant she incurred the losses above which I consider reasonable. But I also consider Advantage's stance on the matter caused her inconvenience, distress, and a significant amount of trouble and upset. Further I consider Ms D and indeed her employer and family also went to considerable efforts to minimise the impact of Advantage declining to consider her claim too. Therefore, in accordance with our published stance on the matter I consider Advantage should pay Ms D the sum of £400 compensation. I consider this is more in line with our approach given the impact on Ms D, which is fairer and more reasonable.'

Ms D's representative responded that she accepted the provisional decision. Advantage didn't respond.

### **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 again in the absence of any comments from Advantage and in view of Ms D's acceptance, I see no reason to change the outcome in my provisional decision.

### **My final decision**

So, for these reasons it's my final decision that I uphold this complaint.

I now require Advantage Insurance Company Limited to do the following:

- Assess the market value of Ms D's car and pay her claim adding interest of 8% simple per year from one month after the date of loss to the date it pays her.
- Refund £124.09 being the loss of her second service under her care package bought with her car on production of that documentation.
- Refund £380.36 being her initial car hire costs adding interest of 8% simple per year from the date these hire costs were incurred to the date it refunds her on production of the relevant invoice.
- Refund £476.38 of the extra insurance costs to enable Ms D to use her brother's car, adding interest of 8% simple per year from the date this cost was incurred to the date it refunds her on production of the relevant invoice.
- Pay the cost of the car seat of £250 given it is covered under the policy adding interest of 8% simple per year from one month after the date of loss to the date it pays her on production of documents to show its cost.
- Pay £300 of the cost of the pram under the personal belongings section (provided it's not already covered by her household insurance) adding interest of 8% simple per year from a month after the date of loss to the date it refunds her on production of documents to show its cost.
- If income tax is to be deducted from the interest, appropriate documentation should be provided to Ms D for HMRC purposes.

- Pay Ms D the sum of £400 compensation for the trouble, upset, distress, and inconvenience it caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 14 May 2024.

Rona Doyle  
**Ombudsman**