

The complaint

Mr J complains that Advantage Insurance Company Limited should meet his claim on a motor insurance policy.

What happened

The subject matter of the claim and the complaint is a premium-brand car with a powerful engine. It was first registered in about 2015.

In 2020, Mr J acquired the car (with a personal loan he says).

For the year from late January 2022, Mr J had the car insured on a comprehensive policy. The policy was in the name of an insurance intermediary.

Advantage was the insurer responsible for dealing with any claim under most of the sections of the policy (but not under the sections on motor legal expenses insurance or on breakdown cover).

Unfortunately, in mid-December 2022, two perpetrators got into the car and one of them drove it into Mr J as he tried to stop them getting away.

Mr J made a claim to Advantage. Advantage got an investigator to do a telephone interview with Mr J.

By a letter dated 9 January 2023, Advantage turned down the claim, saying that Mr J had left the car with keys in the ignition.

Mr J complained to Advantage about that. By a final response dated early February 2023, Advantage turned down the complaint.

Mr J asked us to investigate.

Our investigator didn't recommend that the complaint should be upheld. She didn't think it was unreasonable for Advantage to decline the claim. She said that Advantage had acted in line with the policy terms.

Mr J disagreed with the investigator's opinion. He asked for an ombudsman to review the complaint. He says, in summary, that:

- The thieves made a 200- plus foot trespass through a single- entry / exit fenced private compound to get to the car. When he saw them, they were already running and his few seconds of thought process and standing start gave them a slight advantage which is why he changed direction mid- run to go for the gates.
- They ran him down to prevent him closing the gates and to complete the theft.
- Advantage gave him no assistance with accessing the motor legal element of his policy with regard to his personal injury.

- Advantage deliberately delayed the repudiation letter.
- Advantage hasn't sent us the telephone recording of the interview.
- Advantage should've paid his claim. Then he wouldn't have to ride a bicycle, on which he has recently been hit by an illegal electric scooter and injured again.

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.

The Financial Ombudsman Service is bound by the Financial Conduct Authority's dispute resolution rules. We deal with a consumer's complaint against a regulated financial firm. One of the rules is that, before we can investigate a complaint, the consumer must first have made that complaint to the firm and waited for up to eight weeks for a final response.

I haven't seen enough evidence that Mr J complained to Advantage about a claim for personal injury or medical expenses or legal expenses. So I don't consider that the rules allow me to investigate any such complaints at this stage. In any event, Advantage wasn't the insurer that was responsible for a claim under the motor legal expenses section of the policy.

I will concentrate on Mr J's complaint about his claim for the loss of the car. The circumstances were shocking and have cast a long shadow for Mr J. However, I have to look at whether Advantage treated Mr J unfairly.

The policy terms included the following:

"You're not covered for: theft or damage, if the car keys were left in or on the car or if the car is left unattended with the engine running".

That's not an unusual term. But it is a significant exclusion.

The Insurance Product Information Document included the following:

"What's not insured?"

...

No cover if the keys or other devices are left in or on your car, or if the car's left unattended with the engine running"

So I'm satisfied that the exclusion had been drawn to Mr J's attention at the time he bought the policy.

However, I wouldn't find it fair for Advantage to rely on that exclusion unless the car was unattended.

I have no reason to doubt Mr J's version of events, save that it is for me to decide whether he had left the car unattended. I've had the benefit of the images of the incident and the statement typed up after the telephone interview. Mr J hasn't highlighted any contested details. So I don't consider it proportionate to wait for Advantage try again to get its investigator to provide the recording of the telephone interview.

I've noted that the car was in a fenced and gated compound at Mr J's place of work. From the images, I've noted the position of the gate.

However, I find that Mr J had left a key in the car.

I also find that he had walked away from the car to a position from which he wasn't close enough to the car (or to the open gate) to deter or prevent the perpetrators from getting into the car and driving it towards the gate.

So I find that he'd left the car unattended.

I accept that Mr J made a great effort to head for the gate to try to close it, but the driver deliberately hit him. That was a terrible thing to do to Mr J.

We don't allow insurers to make distinctions between the offences of theft and taking a vehicle without the owner's consent. The assault doesn't alter my view that Mr J had left the car unattended with the keys in it – and that made it easier for the perpetrators to take the car.

So – whilst I don't underestimate the scale of his trauma and loss - I don't find that Advantage treated Mr J unfairly by declining his claim. I don't hold Advantage responsible for the direct financial consequences of that, or for the more remote consequences of having to ride a bicycle on the road. I don't find it fair and reasonable to direct Advantage to meet the claim.

I accept that Advantage was responsible for delay in sending the letter dated 9 January 2023. And this caused Mr J some extra irritation when he found out. However, I don't consider that this was at a level that makes it fair and reasonable to direct Advantage to pay compensation for distress and inconvenience.

Overall, I don't conclude that it would be fair and reasonable to direct Advantage to do any more in response to this complaint.

My final decision

For the reasons I've explained, my final decision is that I don't uphold this complaint. I don't direct Advantage Insurance Company Limited to do any more in response to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 22 August 2023.

Christopher Gilbert
Ombudsman