

The complaint

Ms C complains about Advantage Insurance Company Limited (“AIC”) and their decision to decline the claim she made on her insurance policy.

What happened

Ms C held a motor insurance policy, underwritten by AIC. In late November 2022, Ms C says she awoke to find that her car had been stolen overnight. So, she contacted AIC to make a claim.

AIC attempted to validate Ms C’s claim. But after considering the evidence available to them, including CCTV footage, Ms C’s testimony and analysis of Ms C’s spare key, they took the decision to decline the claim. They wrote to Ms C in February 2023 explaining why, setting out the “General Conditions” section of the policy, which stated that Ms C must not act in a fraudulent manner. Ms C was unhappy with this decision, and AIC’s accusations of fraud. So, she raised a complaint.

Ms C was unhappy with the decision to decline the claim, and she disputed the conclusion AIC reached. Ms C thought her testimony was both truthful and accurate and so, she wanted AIC to overturn their decision and accept the claim.

AIC responded to the complaint and didn’t uphold it. They thought their decision to decline the claim was fair, based on discrepancies found within the information they obtained when validating the claim. So, AIC didn’t think they needed to do anything more. Ms C remained unhappy with this response, so she referred her complaint to us.

Our investigator looked into the complaint and didn’t uphold it. They thought AIC had acted fairly, and in line with the terms and conditions of the policy Ms C held, when declining the claim. They thought AIC were fair to rely on the CCTV footage, and the key analysis provided by an independent third-party. So, they didn’t think AIC needed to do anything more.

Ms C didn’t agree, and she provided extensive comments explaining why. These included, and are not limited to, Ms C’s unhappiness with the report on her spare key and her wish for another report to be obtained as well as Ms C’s belief there could be a number of explanations for how the thief entered her car with what appeared to be a set of keys. Ms C was unhappy that she was now expected to declare the cancellation of her policy and the future ramifications this will have. So, she maintained her belief the claim decision should be overturned.

Our investigator considered all of Ms C’s comments, but their view remained unchanged. And they explained it’s not our services role to direct a business such as AIC to obtain a new report when we feel one has already been obtained. Nor are we able to commission reports ourselves.

Ms C remained unhappy with this stance, and she felt the keys should be retested. As Ms C didn’t agree, the complaint has been passed to me for a decision.

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 the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Ms C. I want to reassure Ms C I've considered all the comments she's raised, even if I don't mention them specifically. And from these comments, I think it's made reasonably clear that Ms C disputes AIC's allegations of fraud, and that she feels strongly about this. I appreciate the seriousness of these allegations, and the future impact on Ms C due to her requirement to declare the cancellation of her policy. I want to reassure Ms C I have considered this at length when reaching my decision.

And before explaining why I've reached my decision, I think it would be useful to set out what I've considered, and how. It is not my role to decide for certain on what I think happened during the theft of Ms C's car, as I wasn't present at the time it was taken. Instead, it is my role consider what I think is most likely to have happened, based on the balance of probabilities. And then, it's my role to consider the actions of AIC alongside this to decide whether I think they acted fairly, and in line with the policy terms and conditions.

When deciding on whether I think AIC acted fairly, I've thought about what decision I think another insurer would most likely have taken, in the same situation with the same evidence available to them. And crucially, this centres around the evidence available to AIC at the time they made the decision. So, this wouldn't necessarily consider new evidence Ms C feels should be obtained.

I've seen the terms and conditions of the policy Ms C held. And these explain within the "General Conditions" section under the heading "Fraud" that:

"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."*

AIC then go onto explain that, depending on the circumstances, they "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 the premium."

So, for me to say AIC have acted within the terms and conditions of the policy, I first need to

be satisfied that, from the evidence available to them, it was reasonable for them to deem Ms C's claim to be false, or fraudulently exaggerated on the balance of probabilities. And I've considered the evidence and information on file to decide this.

I've watched the CCTV footage provided. And I think it's clear the thief approached Ms C's car directly, suggesting the theft was targeting her car specifically. And I can see the thief used a key to enter Ms C's car without any force, and then start the car using that key before driving away. I note Ms C herself doesn't dispute a key was most likely used to steal the car, based on this footage.

Because the footage suggests a key was used, I would expect AIC to seek Ms C's comments regarding this. And this is what they did. I can see upon questioning, Ms C explained she had lost her main set of keys around two years earlier, stating they were lost during travel between her home and a city a significant distance away. And that since that time she'd been using a spare set of keys to drive her car. I note this testimony differs somewhat from her original testimony, shown in AIC's system notes, where Ms C refers to her spare key as her main keys. In answer to the question *"Where were keys kept"* I can see Ms C answers *"My main keys are still at home and were safely stored at the time of the theft"*

Following this testimony, AIC took the decision to inspect Ms C's spare key she had in her possession, to determine its usage. And I can see they instructed an independent expert to provide a report on this. Again, this is something I'd expect AIC to do, as they are entitled to validate a claim before accepting it and I think there were some discrepancies in the information Ms C supplied.

I've considered this report at length. And it makes clear the key Ms C provided had a key blade that would be used to start the cars ignition. The report goes onto explain that *"this key appears to be in very good condition with very little debris within the interior of the key and no wear to the blade which is consistent with being a spare key and not the main key for the vehicle"* before concluding that *"The key condition is very good and not consistent with a key which has been in regular use"*.

I think this conflicts with Ms C's claims she had been using the key as her main key for some two years after the loss of her initial key, as this is an extended period of time and so, the key would've most likely been used regularly. I appreciate Ms C disputes this and has stated she drives around 3,000 miles a year which she feels is low usage and so, may have resulted in there being no wear to the blade. But as Ms C states she lost the original key two years before, even with that mileage it would suggest the key being used for trips to equate to 6,000 miles, and I think that would amount to regular use over that period. So, I'd expect the wear to the blade to reflect this. And I don't think it does.

So, because of the above, I think AIC acted fairly and reasonably when relying on the information provided to them within the independent expert report to decide Ms C's claim was false, fraudulent or exaggerated. And I don't think there is anything within the report that should've led AIC to commission another report, as I think the findings were clear, and conclusive.

I've also thought about the likelihood of Ms C's key, having been lost some years earlier when travelling a significant distance, would be found, and then used to target Ms C's car specifically. And having done so, I don't think I can say AIC have acted unfairly when deciding this rationale to be unlikely, on the balance of probabilities. Had Ms C's key been lost two years earlier when travelling such a long distance, I think it's unlikely it would be found and then her car located for it to be stolen. And even if this was somehow the case, I don't think there is any clear logic, or rationale, to explain why the potential thief would wait two years to then attempt to steal Ms C's car.

As I've already discussed above, I think the CCTV footage shows the thief purposefully targeting Ms C's car. So, I think the thief was aware the key they held was the key for Ms C's car specifically. So, for them to have known this, I think it's most likely that if the key had been lost and found, it would've been around the time of the loss so the thief was able to correlate the key to the car.

So, because of all the above, I think AIC have acted within the terms and conditions of the policy when declining the claim, as I think there were discrepancies found with Ms C's testimony that could lead them to believe the claim was either fraudulent or exaggerated. And because of this, I think AIC acted within the terms and conditions of the policy when declining the claim and cancelling Ms C's policy, as this is what they said they could do. I think it's also worth pointing out that these actions fall within the actions insurers are entitled to take, set out by the industry regulator, where a claim is deemed likely to be fraudulent or exaggerated.

But as I've explained above, I also need to be satisfied AIC acted fairly, as well as in line with the terms and conditions of the policy they provided. So, I've thought about what I think another insurer is most likely to have done, in the same situation with the same information available to them. And in this situation, I think another insurer would most likely have taken the same decision. This is because I think there are clear discrepancies between Ms C's testimony on her use of the spare key, compared to the conclusions of the key inspections independent report. And I don't think Ms C's rationale of how the key could've been obtained, and then used, to steal the car is a plausible one, considering the length of time between when Ms C says she lost the original key, to the theft of her car.

So, I'm satisfied that AIC have acted fairly on this occasion and because of this, I don't think they need to do anything more.

I understand this isn't the outcome Ms C was hoping for. And I appreciate this decision will have a significant impact as she is without the value of her stolen car and is now required to declare the cancellation to future insurers. But on this occasion, I think the decision AIC reached was a fair one, based on the evidence available to them. While I appreciate Ms C has hypothesised other ways a key could've been used to steal her car, such as a key being cloned, I don't think there is any evidence to suggest this is the case. But there is evidence to show Ms C had lost, or wasn't in possession of, a key that could access her car that was originally in her possession. So, I think AIC were fair to assume this was the key used to steal the car.

And as the independent report compiled on inspection of the spare key suggested the spare key hadn't been used as Ms C had stated, I don't think there was any obligation for AIC to seek another report to confirm this finding as it had already been compiled by an independent expert. Nor do I think our service could, or should, commission a new report as I think the report AIC obtained was adequate and fair.

My final decision

For the reasons outlined above, I don't uphold Ms C's complaint about Advantage Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 13 November 2023.

Josh Haskey
Ombudsman