

## The complaint

Miss P complains that Admiral Insurance (Gibraltar) Limited unfairly declined a claim made under her motor insurance policy.

Any reference to Admiral includes the actions of its agents.

## What happened

The circumstances of this complaint are known to both parties, so I've summarised what's happened.

Miss P has a motor insurance policy which is underwritten by Admiral. She made a claim on her motor insurance policy and told Admiral her vehicle had been stolen. Miss P said the vehicle had been recovered by the police and an arrest had been made in relation to the theft.

Admiral investigated and said the police's evidence showed Miss P's daughter had been driving the vehicle when it failed to stop for police, and later crashed. And so, it declined the claim by relying on a policy exclusion which says under "General Exception 1":

*"We will not pay for any loss, damage, or liability directing or indirectly caused or contributed to by:*

*1. Your vehicle being:*

*a. Used by a person or for any purpose not shown on your current Certificate of Motor insurance.*

*b. Driven by anyone who does not hold a valid Driving Licence or who is breaking the conditions of their licence.*

*c. Taken or driven without your consent by someone who normally lives with you as part of your household.*

*d. Used for criminal purposes (including avoiding lawful apprehension."*

Admiral also said Miss P hadn't complied with conditions of the policy which require her to: support the police in their investigation and prosecution against the person responsible; provide Admiral with a Crime Reference Number within 24 hours; and give Admiral all the information and documentation it considers necessary to deal with the claim.

Miss P disagreed with Admiral's decision saying the Crown Prosecution Service (CPS) had dropped the charges against her daughter – and so, there was insufficient evidence to show her daughter had been driving the car. But Admiral maintained its position. Unhappy, Miss P brought a complaint to this Service.

An Investigator considered the complaint and upheld it. He wasn't persuaded Admiral had

demonstrated Miss P's daughter had been driving the vehicle and so, he considered its decision to decline the claim by relying on General Exclusion 1 to be unfair. Admiral disagreed and so, the complaint was passed to me for an Ombudsman's decision.

Having reviewed it, I issued a provisional decision not upholding the complaint, in which I said:

*"What I've provisionally 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 intend to reach a different outcome to the Investigator – I'll explain why. I've only commented on those issues which I consider to be pertinent to deciding the outcome of this complaint.*

*The crux of this complaint is whether Admiral's decision to decline the claim is fair based on the available evidence. Admiral is satisfied Miss P's daughter was driving the vehicle at the time it was recovered by the police – and so, say it was taken without Miss P's permission by someone who lives with her as part of her household. But Miss P says her daughter wasn't driving the car and she's relied on the CPS' decision to not prosecute her daughter in respect of a number of driving offences to be proof of this.*

*I've thought about this, but I disagree with Miss P's reasoning. I accept the letter from the CPS confirms charges against Miss P's daughter in respect of a number of driving offences have been discontinued. But the letter itself doesn't prove her daughter wasn't driving the vehicle at the time it was recovered by the police – which is what's key here.*

*There are a host of reasons why the CPS might discontinue charges and so, it wouldn't be reasonable to conclude – in the absence of supporting evidence - that the discontinuation of charges as evidence of Miss P's daughter not being the driver of the car. I also have to keep in mind that the charges brought against Miss P's daughter were for criminal offences – where the standard of proof is "beyond reasonable doubt". For me to be satisfied Admiral's decision to decline the claim was fair, I need to be satisfied "on the balance of probabilities" Miss P's daughter was driving the car at the relevant time – which is a lower threshold. And based on the evidence I've seen I'm satisfied her daughter was most likely driving the car, having taken it without Miss P's permission. I'll explain why.*

*Notably, the police report says: "Victim has not been contacted as the victim is the suspect's mother and is aware of the offences committed by her daughter." As Miss P's daughter is the "suspect" and was arrested and charged by the police in relation to a number of driving offences – which included driving a motor vehicle dangerously - I'm satisfied it's reasonable to conclude, she was most likely driving the car at the time it was recovered by the police.*

*The police report also confirms Miss P didn't give her daughter permission to drive the car – as it says: "Female did not give her daughter permission." This, combined with one of the charges having been "Aggravated vehicle taking – (initial taker) and vehicle damage [...]" I'm satisfied the evidence shows Miss P's daughter took the vehicle without Miss P's permission.*

*So, based on this, I consider Admiral's decision to decline the claim to be fair and reasonable in the circumstances."*

Admiral didn't reply to my provisional findings, but Miss P did. I've summarised her key points below:

- Miss P disputes the circumstances of the alleged theft. She said she was panicked at the time and didn't know whether arrests had been made. She provided Admiral with all the information and documentation she had and so, is satisfied she complied with

the policy terms. She said it was the police who couldn't provide a crime reference number.

- She said it is unfair for me to rely on Admiral's statements without seeing evidence of the police report which says Miss P's daughter was driving the vehicle when it was recovered.
- She said one of the people in the car had run away from the scene and was thought to be a man, so it couldn't have been her daughter driving the car. She said the car was hijacked by the driver, who had driven the three passengers – including her daughter – against their will. Her daughter wouldn't want to damage Miss P's car, knowing it was precious to her.
- She said, any other statement from the police or any one is wrong. Her daughter had not driven the car. All offences attributable to the theft have been committed by the driver – who was not her daughter.
- If theft is excluded, then it's not a proper insurance policy.
- Her daughter received her full licence in 2023 and does not have any points or restrictions on it.
- She disputed that the police report says: *"Victim has not been contacted as the victim is the suspect's mother and is aware of the offences committed by her daughter."* Miss P feels Admiral is using this to deny a proper insurance claim. She added that, sometimes, police statements contain errors – which may have happened here.
- She explained the car meant a lot to her. And that due to not being able to travel to work, she lost her job.
- In closing, she said Admiral were unfairly suggesting Miss P has colluded with her daughter to destroy her own car.

### **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.

I've also thought about the points Miss P raised in response to my provisional decision. But they don't change my mind and so, I won't be departing from my findings. I know this will be disappointing for Miss P, but I have to decide what most likely happened based on the available evidence. And whilst Miss P might consider the evidence to insufficiently show her daughter was driving the car or had taken it and that Admiral's decision to decline the claim was, therefore, unfair - I don't agree.

Not all the points she's raised are pertinent to the decision I need to make. But I will address those which I consider to be relevant.

Whilst Miss P has said her daughter wasn't driving the car, that it was hijacked by a third party, and driven against her daughter's will – who she says was a passenger – the evidence available to me suggests Miss P's car was most likely driven - or at the very least taken - by her daughter without her consent.

Notably, the exclusion Admiral is relying on refers to the car having been "taken" or "driven"

without the policy holder's consent. So even if I were satisfied Miss P's daughter wasn't driving the vehicle - which I'm not - I still consider there to be sufficient evidence to show the car was more than likely *taken* by Miss P's daughter without her consent.

I say this because Miss P's daughter was in the vehicle when it was recovered by the police, and the police report states Miss P had not given permission for her car to be taken. And I've not been provided with any evidence to suggest the information from the police is inaccurate or can't reasonably be relied upon for the purposes of deciding this complaint – despite Miss P's suggestion that the statement could include errors.

I explained in my provisional decision that the police report said Miss P's daughter was the suspect and that as she'd been charged with a number of driving offences, I was satisfied it was reasonable for Admiral to decline the claim on the basis of Miss P's car having been taken or driven without her consent by someone who normally lives with her as part of her household. And I remain of this opinion. I also explained the CPS discontinuing charges wasn't conclusive evidence that Miss P's daughter hadn't been driving the car – so I won't reiterate that here.

With regards to her daughter's licence – whilst it may not have restrictions or points on it, that doesn't prove Miss P's daughter wasn't driving the vehicle or that it hadn't been taken without Miss P's consent – which is what's key here. So, this doesn't change my mind.

Finally, I appreciate Miss P's car was valuable to her – both financially and personally – and I don't doubt this has been a challenging situation for her. But insurance policies aren't designed to cover every eventuality and based on what I've seen, I remain satisfied that Admiral's decision to decline the claim was fair, and so, I'm not upholding this complaint.

### **My final decision**

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 7 February 2024.

Nicola Beakhust  
**Ombudsman**