

The complaint

Miss S complains that Marshmallow Insurance Limited declined her claim on her motor insurance policy following the theft of her car. She said this is causing her financial difficulties.

What happened

Miss S's car was stolen, and she made a claim on her policy. But Marshmallow declined the claim as it said CCTV footage showed that the car had been unlocked at the time. It said the policy's terms and conditions didn't cover theft in such circumstances. But Miss S said the car had been locked and the thief must have used a cloned key to gain entry, and he had overridden the immobiliser. Miss S said she had to repay the car's outstanding finance and buy a replacement car, and this was causing her financial difficulties and stress.

Our Investigator didn't recommend that the complaint should be upheld. He saw that a key report showed that the keys didn't hold data to show when the keys had been used to lock the car. He thought Marshmallow had reasonably considered the CCTV footage. This showed the wing mirrors already open, and the lights didn't flash when the thief approached. So he thought it was more likely than not that the car had been unlocked at the time. And so he thought Marshmallow had reasonably declined the claim in keeping with the policy's terms and conditions.

Miss S replied that if her battery was flat then the wing mirrors would be out. She said the thief used electronic means to enter the car. She said the thief would have needed a cloned key to drive off as the immobiliser would otherwise have prevented this. Miss S asked for an Ombudsman's review, so the complaint has come to me for a final 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.

I can understand that Miss S feels frustrated by Marshmallow's decision to decline her claim. And I can see that she has had to wait some time while this matter has been investigated. She has explained that the declined claim has caused her a financial burden. And I was sorry to hear this.

Our approach in cases like this is to consider whether the insurer's acted in line with the terms and conditions of the policy and fairly and reasonably.

Marshmallow relied on two of the policy's terms and conditions included in the policy booklet to decline the claim. Under *Section 6- Loss or damage to the Insured Vehicle* it states that Marshmallow won't cover:

"Loss of or damage to the insured vehicle and/or in- vehicle entertainment, communication and navigation equipment while you are not in the vehicle arising from theft or attempted theft when...

the insured vehicle has not been secured by means of door and boot lock".

And under *Section 4: General Conditions* it states that:

“You or any person in charge of the insured vehicle are required to take all reasonable care to safeguard it and its contents from loss or damage, for example the vehicle should not be left Unlocked.”

I think these are a common conditions in motor insurance policies, and I don't find them to be unusual or unreasonable. They are significant but as they are common then I would expect them to be set out in the policy wording as they are. So I think it's reasonable for Marshmallow to rely on the conditions to decline a claim.

Marshmallow said Miss S's car had been stolen because it had been left unlocked. This is a breach of the policy's terms and conditions which would entitle it to decline a claim. So I've considered whether it reached this decision fairly and reasonably.

When Miss S reported the theft, she described the circumstances. She said her car had been parked and locked on her driveway immediately in front of her house during the day. The car's two keys were kept in a “black box” inside the house to prevent duplication of the signal and Miss S still had both keys.

Miss S provided CCTV footage which showed the thief approaching the car and entering it without difficulty. No tools were evident, but he may have held something in his hand. The car's wing mirrors were already out, and the lights didn't flash. Marshmallow said this indicated that the car had been left unlocked as even a cloned key would cause the lights to flash if it had been used to unlock the car. And the wing mirrors would have folded in when the car was locked. After some fiddling under the steering column, the thief drove off in the car after stalling it once.

Miss S thought her car had been targeted and would have been stolen whether it had been locked or unlocked. But I think Marshmallow reasonably considered this and decided that locking the car would have likely deterred the theft due to the extra time and effort it would have taken the thief to enter the car. So I'm satisfied that the unlocked car made a theft more likely.

Miss S drove her car earlier on the day it was stolen. So I haven't seen evidence that it had a flat battery that may have caused the wing mirrors to fold out, as she thought they would have done.

Miss S also thought a cloned key had been used as the thief had to deactivate the immobiliser. She said this was shown by the car stalling shortly after the thief started it. But I think Marshmallow considered this point and reasonably responded that if a cloned key had been used, the thief would have had to duplicate the signal again to restart the engine. But he didn't do so, which Marshmallow thought indicated that the car had been hotwired. Also, Miss S explained that the keys were stored to prevent cloning.

Unfortunately the car's keys didn't hold any data to show that it had been locked. The car hasn't been recovered. So the car's own computer can't be analysed. And Miss S didn't retain any footage to show her last exiting the car and locking it. So I can't see that there's further evidence that Marshmallow should have considered.

So I'm satisfied that it's more likely than not that the car had been left unlocked at the time of the theft. And I think Marshmallow declined the claim fairly and reasonably as Miss S had failed to safeguard her car as she was required to do by the policy's terms and conditions.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 26 October 2023.

Phillip Berechree
Ombudsman