

The complaint

Mr S and Mrs T's representative complains on their behalf that Liverpool Victoria Insurance Company Limited (LV) unfairly declined their claim on Mr S's motor insurance policy.

References to Mr S or Mrs T, or their representative, will include the others.

What happened

In May 2022 Mr S and Mrs T's car was stolen overnight from the drive of their home. It was reported to the police straight away.

A claim was made on Mr S's motor insurance policy that he held with LV. Mrs T was a named driver on the policy.

LV declined to settle the claim and said the car had been unlocked at the time of the theft and therefore it was excluded under the terms of the policy.

As Mr S and Mrs T's representative was not happy with LV, they brought the complaint to our service.

Our investigator did not uphold the complaint. They looked into the case and said there was evidence the car was left unlocked, but there was no evidence to show the car was locked at some point prior to it being stolen. They said as the terms of the policy clearly stated cover would not be provided for theft if the car was left unlocked, LV had not been unreasonable when it declined to cover for the theft.

As Mr S and Mrs T's representative is unhappy with our investigator's view the complaint has been brought to me for a final decision to be made.

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 Mr S and Mrs T are frustrated and disappointed by LV's decision to decline their claim. I can see that this leaves them with an outstanding debt on a car they no longer have and so are considerably out of pocket.

In cases like this our approach is to consider if the insurer acted in line with the terms and conditions of the policy and did so fairly and reasonably.

I looked at the circumstances of the theft. Mrs T said she parked the car on the drive of her home address in the late afternoon and made a number of trips back and forth from the car to unload it and to get her children out. Mrs T said this is a regular routine for her. She said she went into the porch of her house and recalls locking the car on that day but did not look to see if the wing mirrors folded or the lights flash.

The video evidence shows Mrs T getting out and unloading the car as she described, but it does not show the car indicator lights flash or the wing mirrors fold in which would indicate she had locked the car.

When the car was taken from the drive, the evidence shows the thief opening the car door with ease, then bending to do something in the footwell and then driving off after 30 seconds.

The representative said if the vehicle was unlocked it was because it was a targeted theft and a signal jammer had been used. But there is no evidence to support this.

Information provided by a car security expert confirms that at the time of the theft, the car was in an unlocked state. It says when the thief opens the driver's door there are no unlock flashes from the directional indicators and no audible unlocking of the doors. It adds, the side door rear view mirrors are unfolded, which gives an indication that the vehicle is unlocked (unless this feature is switched off or not fitted). The thief has then employed illicit means to start the vehicle.

Taking into consideration all the evidence provided, it appears more likely the car had been left unlocked by Mrs T. And I am satisfied the car was unlocked at the time of the theft.

LV relied upon the exclusion the car was unlocked to decline the claim. I think this is a common exclusion in motor insurance policies, and I don't find it unusual or unreasonable, but it is significant, and I would expect it to be set out clearly in the policy wording.

I checked the terms and conditions of the policy. On page ten it details what isn't covered under the terms of the policy. This includes;

*"Loss or damage caused by theft or attempted theft if:
Your car has been left unlocked or with a window or roof open;"*

I also saw within the renewal documents that were sent to Mr S in June 2021 it includes an insurance product information document that gives an overview on what is and what is not covered. And this includes;

*"What is not insured
Loss or damage caused by theft or attempted theft if you leave your car unlocked, or leave the engine running, or leave the key or ignition device in, attached to or in the immediate proximity of your car, or if you leave a window or sun-roof open"*

The representative said LV had been unfair to rely on this exclusion because Mr S was not told about it.

As this exclusion is a common exclusion in motor insurance policies, and as it was identified within key policy documents, I do not think LV needed to do anything more to highlight this exclusion to Mr S. And he was responsible for checking and understanding his policy.

The representative also said it is unfair for LV to rely on the unlocked exclusion considering all of the above circumstances. They said this exclusion can only be relevant where the fact an insured vehicle is unlocked is material to its loss. They said this was a targeted theft and the thief would still have stolen the car regardless of whether it was locked or not.

Evidence provided by the car security expert says if the car had been locked and the car alarm had been set, the thief would have been unable to have entered the car and employ illicit means to start the vehicle.

If the car had been subject to a signal jammer as Mr S's representative says, I would have expected to see some evidence of the car being opened prior to the thief approaching the car and opening the door with ease.

Mr S's representative confirmed the keys for the car were kept in a security pouch that blocks the signal from the key. This means it would prevent a thief from obtaining the signal from the keys and being able to open the car via a relay of the signal.

I have not been provided with any evidence that proves beyond doubt that this was a targeted theft and that it was immaterial the car was unlocked. If it were a targeted theft there is possibility this may have been due to it being noticed it had been left unlocked.

Based on the evidence I have seen it seems more likely the car was left unlocked by Mrs T. I think LV acted fairly and reasonably when relying on the unlocked exclusion and I'm sorry to say that, based on the evidence provided, I cannot ask LV to cover this claim.

Therefore, I do not uphold Mr S and Mrs T's complaint and do not require LV to do anything further in this case.

My final decision

For the reasons I have given I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs T to accept or reject my decision before 10 August 2023.

Sally-Ann Harding
Ombudsman