

The complaint

Mr B complains that Markerstudy Insurance Company Limited (Markerstudy) unfairly turned down his claim on his car insurance policy following the theft of his car.

What happened

Mr B was contacted by some potential buyers who wanted to view his car, which was for sale. During the viewing, they swapped Mr B's car key for a duplicate and left without buying the car. Mr B realised almost immediately his car key had been swapped and called the police. He says he also emailed Markerstudy. Later that evening, Mr B's car was stolen by the individuals who'd viewed it earlier.

Mr B claimed on his car insurance policy for the theft. Markerstudy turned down Mr B's claim. It said Mr B's policy excluded cover where possession of his car was gained by deception by someone pretending to be a buyer.

Mr B complained to Markerstudy about its decision to turn down his claim and about service delays. Markerstudy upheld Mr B's complaint about the service delays and has paid him £200 in compensation. But Markerstudy said it was correct to turn down Mr B's theft claim.

Unhappy with Markerstudy's refusal to pay his claim, Mr B brought his complaint to us. The investigator who looked at it didn't uphold it. He thought Markerstudy had applied the terms of Mr B's car insurance policy fairly.

Mr B disagrees. He says he took all appropriate measures to prevent his car from being stolen when he realised the key had been swapped. So Mr B's complaint has come to me to decide.

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've decided not to uphold Mr B's complaint. I'll explain why.

Mr B's car insurance policy has some guidance on preventing crime which said he should take appropriate measures to safeguard his car when showing it to potential buyers. It also has an exclusion that says Mr B isn't insured for any loss to his car "*where possession of it is gained by deception on the part of someone pretending to be a buyer*".

Exclusions like this are fairly standard in car insurance policies. We think they're intended to exclude claims where a policyholder hasn't taken reasonable steps to protect their car when allowing someone else access to it. We don't think these exclusions are unfair, as long as an insurer can show it's acted fairly in deciding its policyholder didn't take reasonable steps.

Investigation notes Markerstudy has shown us say the police confirmed that thieves came to view Mr B's car, that after viewing the interior they gave Mr B a copied key rather than the primary key and that the thieves returned later and stole his car.

In Mr B's signed police statement, he describes what happened during the viewing. He says he gave his car key to his partner, she handed it to one of the individuals viewing the car who then turned the engine. Mr B says after turning the engine off, the individuals then asked to look under the bonnet but were struggling with the bonnet catch. Mr B thinks this is when they swapped his key for the duplicate.

I sympathise with what has happened to Mr B, it's a very unfortunate set of circumstances. But from the police report and from Mr B's police statement it's clear he effectively voluntarily handed over possession of his car to the thieves by handing them the car key. I think that, in doing so, Mr B didn't take reasonable steps to protect his car. And this enabled the thieves to steal it later that night.

Mr B says he took all the appropriate measures he could to safeguard his car following the theft of the key. He says he phoned the police as soon as he realised what had happened and he emailed Markerstudy (although it was late night/early morning when these events took place, so Markerstudy's email would've been unmonitored).

Markerstudy says Mr B failed to take appropriate measures to safeguard his car following the theft of the key. It says if Mr B had called its 24-hour claims helpline, it could've given him advice on how to protect his car from theft.

Knowing his car key had been stolen, I think it would've been reasonable of Mr B, in addition to calling the police, to have phoned Markerstudy's 24-hour claims helpline to report the theft. Had he done this, I think Markerstudy would've offered some advice that could've prevented the theft of the car.

Looking at the facts and circumstances of this case as a whole, I think Mr B failed to take reasonable steps to protect his car and I think this enabled the thieves, who'd posed as potential buyers, to gain possession of it by deception.

So, while these are unfortunate circumstances for Mr B, I think Markerstudy has acted fairly and reasonably, and in line with his policy terms and conditions, in turning down his claim for the theft of his car.

My final decision

For the reasons I've given, I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 August 2023.

Jane Gallacher
Ombudsman