

The complaint

Mrs O complains about her insurer, Mulsanne Insurance Company Limited (Mulsanne) repudiating a claim for damage to her vehicle under her motor insurance policy.

Any reference to Mulsanne in this decision includes their agents.

Mrs O brought her complaint to this service more than six months after Mulsanne issued their final response to her. Mulsanne said they didn't consent to waiving the relevant time limits – but they didn't include this position in their final response. As this is a requirement under the FCA's Dispute Resolution rules (DISP 1.6 and 1.6.2) then Mulsanne didn't provide the correct referral rights to Mrs O in their final response. Because of this, our service was able to consider Mrs O's complaint.

What happened

In June 2021 Mrs O took her husband's vehicle to see a friend in hospital. As she wasn't insured under the policy covering the vehicle, she took out a policy providing cover for her and the vehicle by the hour with Mulsanne. She parked the vehicle on a road near to the hospital. When she returned to the vehicle some 15 minutes later she unfortunately found the rear window had been smashed. Tools worth over £2,000 had been stolen from the vehicle and there was damage near the rear window and a front door, indicating attempts to force entry. She asked passers-by if they'd seen anything, but they hadn't. She also asked at a nearby building whether they had CCTV footage that covered her vehicle but was told the cameras weren't working.

Mrs O contacted the police to report the incident as well as Mulsanne to tell them what had happened and lodge a claim. Mulsanne arranged for an engineer (AI) to inspect the vehicle and assess the damage. However, AI concluded the damage to the vehicle had been caused by (the front door) coming into contact with an upright post and (the damage near the rear window) being reversed into a pole or other obstruction (in turn smashing the rear window). Not how Mrs O had described the circumstances. Because they doubted Mrs O's version of events, Mulsanne appointed a forensic engineer (A) to assess the vehicle further.

A concluded the location and nature of the damage was consistent with being caused in low-speed parking manoeuvres (such as a glancing blow with a bollard and from the vehicle being reversed into a protruding object). They didn't think the damage claimed for would have been caused by an attempted break in or forced entry.

Based on the reports from AI and A, Mulsanne repudiated Mrs O's claim, concluding she'd given a false account of the incident. They referred to the policy terms and conditions on fraudulent claims, and in addition to repudiating the claim put a block on her taking out any further policies with them.

Unhappy at what had happened and Mulsanne's actions, Mrs O complained to them. She said photographs of the vehicle clearly showed it had been broken into and there was no pole or other obstruction near the vehicle that she could have reversed into. She also felt Mulsanne hadn't properly investigated the circumstances of the incident.

Mulsanne didn't uphold the complaint. In their final response, they referred to the inspections and conclusions of AI and A, from separate firms. While Mulsanne accepted Mrs O had reported the incident to the police, this didn't prove what had caused the damage to her vehicle. Having considered the reports from the two engineers, Mulsanne confirmed their decision to repudiate the claim.

Mrs O then complained to this service. She maintained her version of events, disagreeing with Mulsanne's conclusions about the incident and their declining her claim. She'd been affected financially by having to pay the cost of replacing the smashed glass (£700 – though to replace it with glass like the original would have cost £1,200). The damage to the vehicle's bodywork would, she estimated, have decreased its value by £2,000 (and repairing the damage would cost a similar sum). And the stolen tools had cost over £2,000. She wanted Mulsanne to settle the claim for repairing the damage, including replacing the rear window with one matching the original and replace the stolen tools.

Our investigator didn't uphold the complaint, and didn't ask Mulsanne to take any action. The reports from AI and A both concluded the damage to Mrs O's vehicle wasn't consistent with what Mrs O had said about the circumstances of the damage. On balance, the investigator was more persuaded by the views of AI and A, rather than the account given by Mrs O. So, our investigator thought Mulsanne had acted fairly and reasonably in repudiating the claim.

Mrs O disagreed with the investigator's view and asked that an ombudsman review the complaint. She reiterated her version of what had happened and rejected AI and A's views on the likely cause of the damage. There were no poles on the road she parked in that could have caused the damage. She also noted some of the contents in the vehicle had been left on the road beside the vehicle, along with broken glass from the rear window. She also provided a statement from her husband, in which he stated the damage to the front door had been caused the previous month by him coming into contact with a bollard (which he hadn't noticed at the time and which his wife wouldn't have noticed as she rarely used the vehicle). As Mrs O hadn't been aware of the pre-existing damage, she would have assumed it was caused as part of the break in/forced entry.

Mrs O also provided a report from an engineer (D) they'd obtained, which from inspection of the vehicle (after the rear window had been replaced) and the photographs of the vehicle after the incident, concluded the damage to the rear window and damage to the adjoining panel was likely to be related to a theft or attempted theft. The photographs showed glass from the smashed rear window on the roadside behind the vehicle with no evidence of a protruding post or similar that could have caused the damage.

As new evidence and information, our investigator shared the statement from Mrs O's husband and D's report with Mulsanne, who considered it. They acknowledged what Mrs O had said about the front door damage being unrelated to the incident. A said they maintained their view of the likely cause of the damage to the rear window (although could not rule out the rear window being broken in order to gain entry to the vehicle). AI accepted the damage to the rear window could be consistent with someone breaking into the rear of the vehicle – but they didn't think the damage to the adjoining panel was consistent with this possibility, maintaining the view it was caused by reversing into something with a relatively high profile. Based on these views Mulsanne acknowledged that while they maintained the damage to the panel adjacent to the rear window wasn't caused by the incident, it wouldn't be possible to rule out the rear window being broken to gain entry to the vehicle. But they thought Mrs O had been trying to claim for damage unrelated to the incident (the front door and rear panel) so they were justified in repudiating the claim under the wording of the fraud *General Condition*. They also said the D appeared (from a search) to have been dissolved in 2011.

Our investigator considered the information from Mrs O and Mulsanne's response but concluded Mulsanne could use the wording of the fraud section to fairly maintain their repudiation of the claim, as Mrs O had provided inaccurate information when making her claim (about the damage to the front door and, in Mulsanne's view, the rear panel). Mrs O confirmed she wanted the complaint considered by an ombudsman, so the case has been passed to me.

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.

My role here is to decide whether Mulsanne has acted fairly towards Mrs O.

The key issue in Mrs O's complaint is whether Mulsanne acted fairly in repudiating her claim for damage to her vehicle, on the grounds they believe she gave a false account of how the damage occurred. In repudiating her claim, Mulsanne draw on the reports from AI and from A. Mrs O maintains the damage was caused by an attempted break in and forced entry, and by the rear window being smashed by the thief/thieves (who also stole tools from the vehicle). Mrs O doesn't believe Mulsanne carried out a proper investigation into the circumstances of the incident.

In considering both points of view, given their reliance on the reports from AI and A, I've considered both reports.

AI's report concludes:

"...the damage to the nearside appears to be consistent with coming into contact with an upright post of some description, and the offside damage to the quarte panel appears to be consistent with the vehicle reversing into something and in turn smashing the rear screen..."

A's report sets out their findings and conclusions based on photographs of the vehicle after the incident (rather than a physical inspection). The report sets out A's findings and conclusions about the location, nature and extent of the damage, specifically that to the front door and to the rear panel adjacent to the rear window. The key conclusions from the report are as follows:

"...From the information available to me at this time, it is apparent that the insured's vehicle had sustained two separate and different areas of damage, one to its nearside and one to the rear of the offside quarter panel and rear screen..."

...I consider that the patterns, dimensions and severity of these areas of damage are consistent with being caused in low sped parking type manoeuvre; the nearside damage being typical of a glancing blow with a bollard and the rear typical of the vehicle being reversed into contact with a square edged protruding object..."

"I do not consider that these areas of damage would have been caused by an attempted break in/forced entry into the vehicle..."

I've also considered the statement from Mrs O's husband and D. The latter's report stated:

"...we would advise in our opinion the broken tailgate glass and horizontal dent to the O/S frame section is likely to be related to a theft / attempted theft. The images taken at the scene show glass from the tailgate on the roadside behind the vehicle with no

evidence of any protruding post or similar that could possibly caused this damage as suggested by the insurer.”

Taking these points together, it seems it is agreed the damage to the front door wasn't caused by the incident – it was (according to Mrs O's husband) caused by him shortly before the incident. His description of what happened also matches closely the opinion of A as to the likely cause of the damage. However, it also seems this agreed version of events only emerged during the course of the investigation of the complaint by this service, some 16 months after the incident (when Mr O provided his statement).

I've then considered the damage to the rear panel adjacent to the rear window. AI and (in particular) A maintain their view this wasn't likely to have been caused in the incident – it was more consistent with coming into contact with a protruding object. Looking at the photographs of the damage to the panel, I'm persuaded that's likely to have been the case, as the damage doesn't appear consistent with trying to force open the rear tailgate of the vehicle (to gain access to the vehicle). So, I've concluded the damage wasn't (on the balance of probabilities) caused in the incident.

This leaves the question of the broken (smashed) rear window. In their response to D's report, Mulsanne accept (as do AI and A) that it's not possible to rule out the rear window being smashed in order to gain access to the vehicle (the photographs of the vehicle taken after the incident show the rear compartment of the vehicle containing boxes of equipment, which may have been observed by a thief and led to them smashing the window to steal the equipment – which is what Mr O maintains, referring to the theft of tools).

Considering these comments, along with the photographs of the vehicle (including glass on the road) I think it's possible this is what happened – rather than AI's view the glass was smashed at the same time as the damage to the rear panel when reversing the vehicle into a post or other protruding object.

Having reached these conclusions, I've then considered Mulsanne's view – both in their repudiation letter, and when responding to the further information and evidence from Mrs O – that Mrs O had breached the fraud condition within the *General Conditions* section of the policy. The relevant wording is set out below:

3. Fraud

If any claim is in any way fraudulent or if you or anyone acting on your behalf has used any fraudulent means, including inflating or exaggerating the claim, or submitting forged or falsified documents, or if you have not given complete or accurate information, then no payment will be made, all cover under this policy will end and you will lose any premium that you have paid...”

Looking at this wording in the context of what happened and my conclusions above, I've concluded Mrs O, by including the damage to the front door and rear panel, did provide inaccurate information when making her claim (if not inflating or exaggerating the claim). While it's now accepted the damage to the front door wasn't related to the incident, I think that should have been made clear at the time the incident was reported (or shortly afterwards) rather than much later as part of this service's consideration of her complaint.

For these reasons, I've concluded Mrs O didn't comply with the above fraud condition. The wording also makes it clear that if this is the case, no cover would be provided under the policy. So, I've concluded Mulsanne have acted fairly and reasonably in accordance with the policy terms and conditions in repudiating Mrs O's claim.

My final decision

For the reasons set out above, my final decision is that I don't uphold Mrs O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 10 August 2023.

Paul King
Ombudsman