

The complaint

Mrs P complains about how Admiral Insurance (Gibraltar) Limited (“Admiral”) declined a claim on her motor insurance policy. Mrs P is represented in her complaint, but for ease I’ll refer to her throughout. When I mention Admiral I also mean its suppliers.

What happened

Mrs P had a motor insurance policy with Admiral covering her car.

In August 2021 her car was stolen from a car park.

Admiral said it would settle the claim on a total loss basis, and payment of the market value of the car was made by Admiral to a third-party finance company. Most of this amount was then sent back to Admiral. Another insurer became involved in the claim around this time because Mrs P had bought a GAP insurance policy from it.

Admiral arranged for an expert inspection of two key fobs provided by Mrs P to it. This was due to suspicions about the method of entry to the car, which had since been recovered. The expert report showed that one fob was for a vehicle with the correct Vehicle Identification Number (VIN), but an incorrect model of car, and the other fob was for a different car.

Mrs P asked for the keys to carry out her own inspection, but the second fob had been lost by Admiral.

Admiral repudiated Mrs P’s claim. It didn’t accept Mrs P’s explanation of the theft was correct. It thought she’d placed one of the key blades into a different fob, and the original fob had been used to steal the car. It said it thought Mrs P has deliberately misled it. It cancelled her policy and kept the premium. It asked Mrs P to repay its costs.

Mrs P brought her complaint to this service. She complains about Admiral’s claims service. She asks that Admiral settle her claim and pays her loss of earnings, refund her premium, pays her increased premiums since the loss, and pay an amount towards her distress and inconvenience.

Our investigator looked into it and thought it would be upheld. He thought that Admiral had repudiated Mrs P’s claim due to its belief she’d misled it, rather than due to evidence it had. He said Admiral should reconsider its rejection of the claim and consider paying Mrs P’s legal costs, compensation, replacement of the missing fob and her financial losses.

Admiral didn’t agree with the view. It said it thought Mrs P had tried to mislead it about the key fob, and that she wouldn’t answer further questions when it arranged for a claims investigator to talk to her.

Because Admiral didn’t agree, this complaint has been passed to me to make a final decision.

I issued a provisional decision to allow both sides to consider the matter further:

I'm issuing this as a provisional decision because, while I agree Admiral hasn't done enough to reject Mrs P's claim on the basis it has, my proposed outcome is different from our investigator's.

I can see that Admiral declined Mrs P's claim under its fraud condition:

"General Condition 9: Fraud

You must always answer our questions honestly and provide true and accurate information. If you, any other insured person or anyone acting on your behalf:

- provides us with false, exaggerated or misrepresented information*
- submits false, altered, forged or stolen documents.*

We will take one or more of the following actions:

- amend your policy to show the correct information and apply any change in premium*
- cancel your policy, under certain circumstances this may be with immediate effect*
- declare your policy void*
- refuse to pay your claim or only pay part of your claim*
- only pay a proportion of your claim*
- keep the premium you have paid*
- recover any costs incurred from you or any other insured person.*

If we identify any fraud or misrepresentation, we will cancel or void any other EUI policies you are connected with."

It's Admiral's position that:

"One of the keys sent into us is not for your vehicle, and as there are only 2 keys coded to your vehicle, we must believe that you had a matching blade cut to put into the fob to attempt to cover up a missing key.

We have to believe that the missing fob for your vehicle was utilised for the theft.

We believe that there has been a deliberate attempt to mislead us over the circumstances surrounding the incident and as result we have no option but to repudiate your claim."

Admiral knows that when an insurer seeks to rely on an argument of fraud to decline a claim and cancel a policy, the insurer has to support that with strong evidence. That is because fraud is a serious accusation which can have significant implications for its policyholder.

Implications that may impact their wider life and are not just restricted to the cover in question or even just any wider insurance provisions. It's rare that some discrepancies alone will be enough to satisfy this service that a finding of fraud is likely fair and reasonable.

I've looked carefully at the report Admiral commissioned that's been used as the basis to

decline Mrs P's claim. I agree that the report shows inconsistencies with the physical evidence, but I don't think it's fair to rely solely on the report to reject this claim. So I don't think Admiral has acted fairly here and I'll explain why.

Admiral arranged for a key expert to examine both fobs, which are for a keyless system. This type of fob contains a hidden key blade for backup or 'emergency' use. For ease I'll now refer to these as Key 1 and Key 2, and when discussing the key blade I'll say so.

The expert said Key 1 was apparently the key that was supplied with her car, from new. They said they thought its wear showed it was probably used as a spare key. This key seemed to be the one used by Mrs P on the day of the theft and its last use was about 15 minutes from when she said she last used it.

In its report the key expert states the key was for a particular model of car. But the model stated on the report wasn't correct – it wasn't the same as Mrs P's. This is despite the VIN stored on the key, and consequently on the report, being the correct VIN for her car. I've not seen an explanation of this.

Key 2 was also examined by the expert. I can see from the photos it's visually a similar, but not identical, type to Key 1. This key was from another vehicle, which was manufactured and then stolen about a year before Mrs P's was made. The key expert again says this key seemed to have wear patterns showing it was a spare key. It held data saying it hadn't been used since before Mrs P's car was made.

Both keys' hidden blades have been described by the key expert as identical. I'm not sure as to the extent of the check the expert has carried out to check this.

The key expert also said Admiral could ask the manufacturer to tell it whether the keys were electronically linked to the car's engine management system, but Admiral didn't do this.

Key 2 was later lost, with Admiral saying its supplier had it, but the supplier providing photographic evidence to Mrs P demonstrating that it was only supplied with one key.

This service usually accepts the view of an expert as being of utmost value in our considerations, but here I can see there's an error or oversight in the information which leads me to question the evidence provided.

Key 2 becomes the main piece of evidence that this complaint hinges on.

It's the presence of Key 2 that Admiral say demonstrates that Mrs P was acting fraudulently, as it shows that a blade for the car was placed in a fob that couldn't have been used with the car.

And it's the loss of Key 2 that potentially means Mrs P can't prove an error had been made somewhere by Admiral, or its expert, about its modification or involvement in taking her car.

What I mean here is that Mrs P hasn't been able to carry out her own checks on Key 2 as it's gone missing at some point in the claims process, and I can't reasonably say that's Mrs P's fault.

In its final response to Mrs P and in its further responses to this service, Admiral has referred to the key expert's report to say that Key 2 could not have been used with the car so it believes there was another key involved in the car being taken.

But the discrepancy about the car model for Key 1 leads me to think Admiral should have

investigated the situation further before it declined Mrs P's claim. For example, it didn't enquire further with the manufacturer despite its expert saying this was possible.

The reason given by Admiral for rejecting Mrs P's claim has a basis in fact because of the expert key report, but to say "we must believe that you had a matching blade cut to put into the fob to attempt to cover up a missing key", and continue to use that as the basis for rejecting her claim for misleading it is, in my view, stretching that evidence into conjecture.

The loss of Key 2 and the discrepancy in the key expert's report mean, on balance, I don't think Admiral has reasonably declined Mrs P's claim on the basis it has.

So, I think the fair approach is that Admiral reconsider the claim by investigating the situation further.

For clarity, this doesn't mean Admiral must accept the claim, only that it should reconsider it without relying on its beliefs about what happened solely based on its key report.

I can see from the file that Mrs P has asked for consideration of loss of use of the car, loss of earnings, distress, and other costs she's incurred in making her complaint against Admiral. I've not considered these further as I can't see these points were included in Mrs P's complaint to Admiral.

If Admiral agrees to settle Mrs P's claim then she's free to make a further complaint to Admiral about how it offers to do so, and then to this service in due course if she remains unhappy.

It's important that I say if Admiral agrees to settle Mrs P's claim then I'd also expect it to remove fraud markers it's placed in its internal and any external databases.

It's my understanding that Mrs P has said that if Admiral decline her claim, and I've said above that it cannot solely use the existing report as its reason for doing so, then she is prepared to pursue the matter in court. This is her right.

Responses to my provisional decision

Admiral didn't respond. Mrs P responded and accepted my provisional decision. She pointed out that she'd also asked for her costs to be covered as part of her complaint.

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 looked at Mrs P's response which says she did complain to Admiral about her costs and expenses. I agree she did include this in her complaint, but only after Admiral had issued its final response. So I'm not able to consider it further here and I'd draw her attention to the paragraph in my provisional decision about how Admiral might settle her claim and her possible subsequent actions.

As Mrs P's accepted my provisional decision and because Admiral didn't respond, my final decision and reasoning remain the same as in my provisional decision.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint. I direct

Admiral Insurance (Gibraltar) Limited to reconsider Mrs P's claim as I've explained.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 8 January 2024.

Richard Sowden
Ombudsman