

The complaint

Mr L complains that Premier Insurance Company Limited declined his claim made on his motor insurance policy following the theft of his car. He wants it to pay his claim.

What happened

Mr L's car was stolen by a potential buyer, and he made a claim on his policy. But Premier declined it because it said theft by deception wasn't covered under the policy. And also, theft wasn't covered when the keys had been left in the unattended car. Mr L was unhappy with this and said Premier had made a mistake about the keys.

Our Investigator didn't recommend that the complaint should be upheld. He thought Mr L had left the car and its keys with the potential buyer. He thought the policy excluded cover when the keys were left in the unattended car and when someone got permission to drive it as a pretended buyer. So he thought Premier had declined the claim in keeping with the policy's terms and conditions.

Mr L replied asking for his complaint to be reviewed, so it's come to me for a final decision. He said the thief had stolen the key from outside his house and it hadn't been left in the car's ignition.

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 L feels it to be unfair that his car was stolen but Premier won't pay his claim. He thinks that Premier shouldn't decline his claim because of policy exclusions. He has told us that he's sold many cars in the same way and hasn't been deceived by a thief previously. I can see that he's lost money because of the declined claim.

Mr L described the circumstances of the theft. He said the thief responded to an advert for the car and came to his house. A price was agreed to be paid by bank transfer. Mr L and his son left the thief with the car whilst they went into their house, and the thief drove off in the car. No money was transferred, so they later realised the car had been stolen. Mr L reported the theft to the police and his insurer, but the claim was declined.

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. I can see that the policy contains the following exclusions from cover:

"SECTION 1: WHAT WE DON'T COVER YOU FOR

We will not insure loss of or damage to your car caused by the following:

- *Theft or attempted theft while nobody is in your car, unless all the doors, windows and other openings are closed and locked, the car keys are removed, the engine has not been left running, and the car alarm or immobiliser is set (if you have an alarm or immobiliser).*

- *Your car being stolen or driven by a person who got your permission by pretending to be either a buyer for it or offering to sell it for you.”*

I think these are common exclusions in motor insurance policies, and I don't find them unusual or unreasonable. And I think they are sufficiently clearly set out in the policy wording so it's fair for Premier to rely on them..

I can see that the policy documents were emailed to Mr L when he took out his policy and so I think he should have been reasonably aware of the exclusions.

Premier's file notes say that Mr L had left the keys in the unattended car with the engine running when the thief stole the car. Mr L later said that this wasn't correct, and the keys had been left near the house and the thief had stolen them. Premier hasn't been able to locate the call recording of the first report of the theft. So I can't hear exactly what was said. But I have seen Premier's notes and I can't see that Mr L mentioned the keys being stolen when he first reported the claim. So I think it's more likely than not that Premier's notes are correct.

Mr L had negotiated the price with the buyer. And he said they were waiting for the buyer to pay the money into their account when he came to view the car. After he drove off, a message from the buyer said he was returning the car in a few hours' time. And Mr L didn't appear anxious about this in his response. The theft wasn't reported to the police until two days later, and it was a further day before Mr L reported the theft to Premier's claims handler. So I think it's most likely that the keys had been left in the car and the thief used the opportunity of both Mr L and his son being in their house to steal the car.

But I also think the car was taken by deception. Mr L was deceived into thinking that a payment for the car had been made to his son's account. When considering these types of complaints our approach is to draw a distinction between those circumstances in which the customer has voluntarily handed over possession of the vehicle to the "thief" and those where the customer intended to retain control over the vehicle. The reason for this is that we're of the view that a strict and literal application of the "deception" exclusion has the potential to result in unduly harsh outcomes.

So I've considered the theft circumstances and whether Mr L took reasonable steps to protect the car from theft. As I've said above, I think it's most likely that the keys were left in the car. At the time, Mr L and his son were in their house and so not in a position to deter the thief. So, by their actions, they allowed the car to be taken without first confirming that the bank transfer had been made. I can't see that Mr L established the buyer's identity or checked his licence to drive the car.

So I don't think Mr L took sufficient care to deter the theft by the potential buyer. And, as I've said above, Mr L wasn't perturbed at the time by the buyer driving off. So I think it's reasonable to conclude that he voluntarily handed over possession of the car.

And so I think it was fair and reasonable and in keeping with the policy's terms and conditions for Premier to decline Mr L's claim for the theft of his car. I don't require it to pay Mr L's claim.

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 Mr L to accept or reject my decision before 29 September 2023.

Phillip Berechree
Ombudsman