

The complaint

Mr S complains that Watford Insurance Company Limited (Watford) declined his claim following the theft of his car, under his motor insurance policy.

What happened

In February 2022 Mr S's car was stolen. He reported it to the police, but the car wasn't recovered. Mr S made a claim to Watford, which it declined. He says it did so unfairly. Mr S describes how two potential buyers arranged to view the car the day before the theft. He says the potential buyers must've changed the key blades, which allowed them to take the car.

In its final complaint response Watford says it arranged for Mr S to be interviewed. He told it the buyer who took the test drive had possession of the main key. And that the other buyer requested to see the spare key, to ensure it was working. Watford arranged for both keys in Mr S's possession to be analysed. One turned out to be for a different car. Watford says it's likely the potential buyer swapped the spare key. This was then used to steal the car.

Mr S disagreed with Watford's decision and referred the matter to our service. Our investigator declined his claim. She says Mr S referred, in both his statement to Watford and in his initial claim, to handing over his spare key. She didn't think Watford treated Mr S unfairly when relying on its policy terms to decline his claim. This is because the policy terms say that loss due to deception, by someone claiming to be a buyer, is excluded from cover.

Mr S disagreed. He provided a statement dated in May 2023. In this statement he says he didn't give the spare key to either of the buyers. Rather he operated it himself when requested. Our investigator didn't change her mind, so Mr S asked for an ombudsman to consider his complaint.

It has been passed 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'm not upholding Mr S's complaint. I'm sorry his car was stolen and for the financial loss he's suffered as a result. But I don't think Watford treated him unfairly. Let me explain.

I've read the statement Mr S gave to Watford after the theft of his car. In this he says:

"The last journey in my car was on Thursday 17th February 2022 was when I accompanied a potential buyer on a test drive during the late evening.

The potential buyer arrived at about 2200 hours and he was accompanied by his brother in law. He told me that he was insured to drive his own car so I assumed that he was fully

insured to drive my car on a test drive. He did not show me any insurance documents.

I accompanied the male who was driving my car on the test drive for up to one hour, whilst the other male remained outside my address. We then returned to my home address and my car was parked outside. The male who had test driven my car was holding the vehicle key unit whilst we were outside my address. The other male then asked to see the spare key and told me that if it was not used for a long time, it could fail to work and he asked me to press the button on the spare key to ensure that it locked the car and then unlocked the doors, which it did.

The two males then asked to check the engine under [sic] bonnet and they then looked over the vehicle once again. The front passenger window did not close properly after one of the males opened it, so the same male then used the key unit, pressed the buttons making it 'beep' and flash and the window eventually closed correctly.

...They stated that they would bring their wife/sister to collect the vehicle and arrange a bank transfer for the purchase and promised to pay a deposit of £500 by a bank transfer before they left.

I was then told that there was an issue with their banking system and were unable to transfer the £500, so they left to collect the female. They called me soon after to say that their car had broken down and that their car had to be recovered so they would return the following day to collect the [car].

I then locked the vehicle using the key unit at about 2330 – 0000 hours.

I got up at about 0700 hours, looked outside my address and I saw that my car had been stolen."

I've listened to the call when Mr S first reported the theft of his car to Watford. In this he explains to its agent that he thinks the potential buyers made a copy of his car key. The information he provided corresponds with that set out in the statement above.

I've read the statement provided by Mr S's legal representative. This was provided in May 2023. It says Mr S's first language isn't English and he wasn't offered an interpreter at the time he gave a statement to Watford. The statement says Mr S took all necessary precautions to protect his car, and it hasn't been shown that the prospective buyers stole it. The statement says Watford is unfairly penalising Mr S as anyone could be deceived by these 'sophisticated tactics'. The representative says Watford shouldn't be able to rely on the exclusion it has to decline this claim.

In response to our investigators view, Mr S's representative emailed our service to say Mr S hadn't given his spare key to one of the prospective buyers, as she'd said. Rather he had pressed the button on the spare key, when asked to do so. This was to demonstrate that it worked. The representative says there is no acceptance of Mr S passing the spare key to one of the prospective buyers.

I've read the report provided by key analyst who looked at both key fobs Mr S sent to Watford after the theft. I've copied the relevant excerpts below:

"The two keys handed in appear to be genuine [manufacturer] remote keys of the correct type but for two different cars. The keys were sent to [manufacturer] in Germany to be tested on factory equipment. The report showed the key now marked no.1 was correct for the car...Key no.2 was for another car with the [vehicle identification number for a different car].

The emergency blades were both correct for the car in question so somebody has deliberately swapped blades, probably to use the second key to steal the car...Key no.1 was correct electronically and the emergency blade was correct; the key had been used 8,489 times. [Manufacturer] said there have been no changes to locks or EIS (Electronic Ignition Switch) or other keys issued by them. The second OE key is currently unaccounted for."

The key expert concluded his report to say:

"Given the excellent security system on this car, in my opinion the three possible theft methods are that it could be uplifted or towed away, the security system overcome as outlined or it could have been driven using a correctly programmed key. [The manufacturer] say that to add a key the car would need to be connected to one of their [name of system] diagnostic systems in a dealership and registered as present and a key ordered from them."

I've thought very carefully about the circumstances of Mr S's loss. It's not disputed that he accompanied a prospective buyer on a test drive around 10pm the night before his car was stolen. Mr S reports that the theft occurred before 7am the next morning. So, the theft occurred a relatively short period after the prospective buyers had left.

The analysis of the spare key Mr S sent to Watford shows it wasn't registered to his car. The emergency blade was for his car, but the electronic fob component wasn't. Mr S hasn't been able to account for why he doesn't have a spare fob registered for his car.

I note what Mr S says in his statement in May 2023, that he didn't give the spare key to one of the potential buyers. However, this statement was provided over a year after the theft occurred. I think it's reasonable that Watford relies on the information provided closer to the time of the claim.

I've listened to the first notification of loss call. I acknowledge what Mr S's representative says about his language skills. But I don't think it was evident during this call that Mr S struggled to understand English. He clearly understood what he was being asked by Watford's agent and was able to provide clear responses. However, I note that Mr S didn't say he'd handed the spare key to the prospective buyer during this call. The statement from February 2022 doesn't say this either.

In both this statement and the first notification of loss call Mr S does refer to one of the prospective buyers using a key fob to close a window. This was after the window had failed to close properly. He recalls the fob flashing and beeping.

Having considered all the evidence and circumstances of this complaint, I think that it's more likely than not that Mr S's car was stolen using his spare key fob. I think Watford's view is reasonable that the prospective buyers were able to switch the genuine fob. And this likely happened whilst the prospective buyers were viewing the car. In his statement Mr S says he demonstrated his spare fob worked. The fact that the spare key fob he provided to Watford isn't registered to his car, supports it having been switched by the prospective buyers.

It's suspicious that the men agreed to buy the car but didn't provide a deposit as promised and made excuses why this couldn't be paid. They also made excuses as to why they would need to collect the car the next morning. After the car had been stolen there was no further contact and no answer on the mobile number the prospective buyers had previously used. Based on all this, I think Watford's view is reasonable that it's likely these men stole, or were involved in the theft of Mr S's car.

Mr S's policy terms under section two, "*Damage or loss by Fire or Theft*" say:

“What is not covered

Loss of or damage to Your Car where possession of it is gained by deception by someone who claims to be a buyer or agent.”

Based on this evidence I don't think Watford treated Mr S unfairly when relying on its policy exclusion to decline his claim. So, although I'm sorry Mr S's car was stolen, I can't reasonably ask Watford to do anymore.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 November 2023.

Mike Waldron
Ombudsman