

## **The complaint**

Mr T complains that One Insurance Limited rejected a claim he made under his motor insurance policy.

## **What happened**

Mr T advertised his car for sale and met with a potential buyer. Unfortunately the “buyer” stole Mr T’s car during a test drive.

Mr T has provided us with a detailed report of what happened. He said the buyer phoned him in response to his advertisement. After a lengthy call during which the buyer told Mr T his name and the town in which he lived, Mr T arranged to meet him. The buyer carried out an inspection of the car, and complimented Mr T on its condition. Then the buyer then asked for a test drive. Mr T looked at the buyer’s driving licence and insurance documentation. After this, he asked the buyer if he wanted to drive the car. The buyer declined and said he just wanted to sit in the passenger seat.

Mr T and the buyer then went on the test drive together. Mr T says he drove the car on a dual carriageway. On the way back to Mr T’s house the buyer asked if Mr T could drive the car on another road – not a dual carriageway. Mr T did this. He then pulled into a car park so the buyer could test the exhaust. Mr T says the buyer got out of the car and put his hand over the exhaust pipe while Mr T put his hand on the accelerator. The buyer told Mr T it was excellent.

By this point Mr T says he wholeheartedly trusted the buyer. He swapped places with him and let the buyer drive to another car park (one with less pot holes) to test the car further. While the buyer drove the car they shared stories about buying and selling cars. The buyer told Mr T that he’d been a victim of a fraud before when he tried to buy a car from someone who denied receiving his deposit.

Mr T says the buyer then drove into a car park. The buyer checked the bearings and steering linkage, and then asked Mr T to help him check the front and rear sensors. The buyer asked Mr T to put his hand over each of the front sensors and said he would signal to him if each one was fine. The buyer did this. He then asked Mr T to stand at the rear of the car while he reversed it towards him. The buyer then asked Mr T to cover the sensors as he did at the front. While Mr T bent down to put his hand over the rear sensors the buyer accelerated off at speed.

Mr T reported the incident to the police. They confirmed that there was no CCTV of the incident, and that they’d been unable to recover the car.

Mr T made a claim to his insurer, One Insurance. One Insurance rejected his claim because it said Mr T hadn’t protected his car from loss when he got out of the car while the keys were in the ignition and the buyer was inside.

Our investigator recommended the complaint should be upheld. He thought that Mr T had taken reasonable precautions to protect his car from theft given that he'd checked the drivers licence and insurance documents provided to him. So our investigator thought Mr T's claim should be reconsidered in line with the terms and conditions of the policy. He also felt that One Insurance should pay Mr T £150 for the trouble and upset its handling of the claim caused.

Mr T agreed with our investigator, but One Insurance didn't. It appreciated it was standard practice for buyers to test drive vehicles before they were sold. But it thought this could've been done without Mr T exiting the car. It also said Mr T had been informed that any claims arising out of him carelessly or recklessly offering their vehicle to a third party would be excluded. So it asked for an ombudsman to review this complaint.

#### my provisional decision

In my provisional decision I said Mr T's complaint should be upheld. But my reasons and outcome were different to our investigator's.

I said that when One Insurance declined Mr T's claim it relied on the section 12.2 of the policy terms and conditions. This said:

*You or any person in charge of your car must take reasonable precautions to:*

- *Maintain your car in an efficient and roadworthy condition*
- *Protect your car from damage or loss*

One Insurance said that when Mr T exited the car, leaving the buyer inside with the ignition on, he didn't protect the car from loss.

However, I said that section 12.2 of the policy required Mr T to take *reasonable precautions* to protect his car from loss. Like our investigator, I thought Mr T did that. That's because he checked the buyer's driver's licence and insurance documents before he went on the test drive so that he could check the driver was qualified and insured to drive the car.

I appreciated that Mr T left the keys in the ignition when the buyer was inside the car. But I said I needed to consider the circumstances leading up to that point. Mr T left the keys in the ignition when the buyer was inside the car at the end of what sounded like a lengthy test drive.

Mr T has given us a detailed account of what he and the buyer talked about during the test drive, before the car was stolen, and how the buyer built up trust with him. One insurance didn't dispute what Mr T said in his statement.

Having considered everything Mr T has told us, I was persuaded that Mr T went on the test drive in good faith, with someone he thought was a genuine buyer. From what Mr T has told us about what happened during the test drive, I didn't think Mr T had any reason to think that the buyer wasn't genuine when he got out of the car to help test the parking sensors. The buyer had taken a genuine interest in the car, shared a personal experience about giving a deposit to someone that denied receiving it, and hadn't wanted to drive the car straightaway.

By the time the car was stolen, the buyer had already driven the car with Mr T inside. Mr T had already exited the car (with the buyer inside and the ignition on) to help the buyer check the two front parking sensors. The buyer had used his hand to gesture that the front parking sensors were working.

So I didn't think Mr T thought his car was at risk of being stolen when he went to the back of the car to help test the parking sensors. I was satisfied that the buyer took advantage of a small window of opportunity at this point to distract Mr T and take the car.

In the circumstances, I understand why our investigator thought that One Insurance should not decline Mr T's claim by relying on section 12.2 of the policy, and should reconsider Mr T's claim in line with the other terms and conditions.

I thought One Insurance should do this too. With that in mind, I also commented on another term of the policy that One Insurance might seek to rely on in connection with this claim.

Mr T's policy says that One Insurance will not pay a claim in circumstances where loss is caused:

*"by you carelessly or by recklessly offering your car to a third party; including deception, fraud or trickery, including when you are offering your car for sale."*

I thought One Insurance might try to argue that the theft happened in circumstances where Mr T was deceived by someone pretending to be a potential buyer of his car.

I didn't think it would be fair for One Insurance to rely on this term to refuse to pay Mr T's claim. I said that because for this exclusion to apply, it would be appropriate for me to consider whether Mr T took all the reasonable steps he could to stop his car being stolen. Motor insurance policies are meant to cover genuine thefts, and there's no dispute that his complaint concerns a genuine theft. Generally, I don't think it's fair and reasonable outcome for an insurer to rely on this type of clause where the seller took all the reasonable steps they could to prevent a genuine theft. And I'm satisfied that Mr T took reasonable steps to prevent his car from being stolen.

So for the reasons set out above, I didn't think it would be fair and reasonable for One Insurance to rely on the theft by deception term when doing this.

Taking the matter as a whole, I said I intended to uphold this complaint and tell One Insurance to:

- settle Mr T's claim, subject to the remaining terms and conditions of the policy. It should not rely on the theft by deception term when doing this.
- include 8% simple interest from the date of the theft, to the date of settlement on any amount it pays in settlement of Mr J's claim.
- pay Mr T £150 compensation for the trouble its handling of Mr T's complaint as caused.

Mr T responded to say that he agreed with my provisional decision.

One Insurance disagreed with my provisional decision. It said that after reviewing the complaint it still felt that Mr T didn't take reasonable steps to secure his vehicle. That's because he still allowed an unknown third party to have complete control of his vehicle when he had exited it. It said there were a number of ways in which Mr T could have provided evidence of the parking sensors without leaving the vehicle. Mr T could've reversed the car whilst remaining in it as this would have triggered the parking sensors.

### **What I've decided – and why**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And I still think the redress I recommended in my provisional decision is appropriate. I'll explain why.

## **Putting things right**

In response to my provisional decision One Insurance has said that it still felt Mr T didn't take reasonable steps to secure his vehicle. That's because he still allowed an unknown third party to have complete control of his vehicle when he had exited it. It thinks Mr T could have taken other steps to check the parking sensors, without leaving the vehicle.

I understand the point One insurance is making. However, I remain of the view set out in my provisional decision, for the same reasons. I accept that in retrospect Mr T could have taken other steps to check the parking sensors, without leaving the vehicle.

However, bearing in mind all the circumstances leading up to the point when Mr T left the keys in the ignition when the buyer was inside the car, I understand why Mr T did what he did. I think Mr T did take reasonable steps to secure his vehicle. So I remain of the view that the redress I recommended in my provisional decision is appropriate.

## **My final decision**

My final decision is that One Insurance Limited should:

- settle Mr T's claim, subject to the remaining terms and conditions of the policy. It should not rely on the theft by deception term when doing this.
- include 8% simple interest from the date of the theft, to the date of settlement on any amount it pays in settlement of Mr J's claim.
- pay Mr T £150 compensation for the trouble its handling of Mr T's complaint as caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 1 May 2020.

Laura Forster  
**Ombudsman**