

The complaint

Miss T complains that Tradewise Insurance Company Limited declined her claim against her motor insurance policy. Reference to Tradewise includes reference to its agents.

What happened

In April 2019, Miss T says that she parked her car near her house at about 3pm and last saw it at around 6pm. Early the following morning, the police visited Miss T's home and told her that her car had been stolen and recovered after it had been driven by the thieves, who caused damage to Miss T's car and other cars. It transpired that on the evening before, a visitor to Miss T's home took one of her car keys and, with another man who was unknown to Miss T, stole her car. The visitor who took Miss T's car was subsequently convicted of aggravated vehicle taking.

Miss T made a claim against her policy. Tradewise instructed an engineer who said that the car was a category N, total loss, which means that it didn't have structural damage but would cost more to repair than it was worth. The engineer estimated the repair costs as £9,911.99. He said that the pre accident value of the car, after deduction of the salvage was £7,799.

Tradewise instructed an enquiry agent to interview Miss T. It subsequently declined Miss T's claim. Tradewise relied on an exclusion in the policy which said that it didn't cover loss or damage caused by theft or any malicious act by Miss T's friend or a member of her family. It said that it appreciated that Miss T's visitor hadn't been found to be the driver at the time of the incident, but he'd expedited the theft by taking the car keys.

Miss T says that in July 2019, she paid to have her car returned to her from the salvage yard and subsequently paid £800 for repairs.

Miss T didn't think that Tradewise acted fairly in declining her claim. She said that her visitor isn't related to her biologically or by law and is not her friend. Miss T wants Tradewise to deal with her claim. She says that she needed her car to get to work.

One of our investigators looked at what had happened. She didn't think that it was fair for Tradewise to rely on the exclusion in order to decline Miss T's claim. The investigator said that the policy doesn't define "*family*" and the visitor wasn't a family member. She said that the policy didn't exclude cover in the circumstances that arose here. The investigator said that it wasn't in dispute that the theft of Miss T's car occurred. She said that Tradewise should review the claim in line with the remaining terms and conditions.

Tradewise didn't agree with the investigator. It said whilst the policy didn't define "*family member*" it was satisfied that the visitor could be considered a member of Miss T's extended family, even if not biologically connected. But even if he wasn't a family member, he was invited into her house as a friend for dinner. Tradewise said it had every sympathy with Miss T and it doesn't dispute the circumstances of the theft, but it hadn't received evidence that the visitor had been found guilty of theft.

There were further exchanges, which I won't set out here. As there was no agreement between the parties, the complaint was passed to me to decide.

My provisional decision

On 14 August 2020, I sent both parties my provisional decision in this case. I said:

"The starting point is Miss T's policy, which provides cover for theft but excludes cover for:

*"(15) Loss or damage occasioned by theft or attempted theft or any malicious act expedited by or in anyway brought about by the **Insured**, any Employee, Partner, Director, Friend or member of their families."*

It's established that Miss T's car was stolen. Where an insurer wishes to rely on an exclusion in the policy, it has to show that the exclusion applies in the circumstances that arise. I don't think it's done that here and I'll explain why.

The policy doesn't define either "Friend" or "...member of their families". So, I proceed based on the ordinary, natural meaning of those words. I don't think that Tradewise has shown that the visitor was Miss T's friend or a member of her family.

Tradewise relies on the enquiry agent's report. I appreciate that Tradewise's enquiry agent describes the relationship between Miss T and the visitor as one of step-parent/step-son but that's not definitive.

Miss T says that the visitor isn't related to her but is related to her dependent children, as he is their half-brother – they share the same father. She says that she was never married to or lived with his father and never shared a household with him. Miss T says that she's known him since he was four years old but neither she nor her children had any contact with him for several years, until approximately a month before the theft of her car. That was when the visitor moved to their area and contacted her children. As she didn't know him, she agreed to facilitate contact between him and her children at her home, as she wasn't ready to trust him or leave her children in his sole care. She says that the hospitality she showed was exploited and she's ceased contact with him. Miss T says that she told Tradewise all this on the day she reported the theft.

Whilst the visitor is related to Miss T's children, he's not related to Miss T. I don't think that Tradewise has established that the visitor who took the key and was subsequently convicted of aggravated vehicle taking was a member of Miss T's family. The background and history don't support that conclusion. Miss T wasn't biologically related to the visitor, had never lived in the same household as him, didn't act as a surrogate parent when he was a minor and hadn't seen him for many years until a month or so before the theft.

I don't think that Tradewise has established that the visitor was Miss T's friend. She's described the circumstances which led to him being in her home when he stole her car key. Miss T was endeavouring to protect her children whilst facilitating contact with their half-brother. She also mentioned that she was aware that the visitor had experienced difficult times and that she wanted him to know he could talk to her, but I don't think that establishes a friendship. I don't accept Tradewise's assertion that Miss T would have only invited a friend into her home. Miss T has provided a reasonable explanation why the visitor was in her home which doesn't amount to him being her friend.

So, I don't think that Tradewise has established that the exclusion applies in this case. I think it acted unfairly in refusing Miss T's claim. To put matters right, Tradewise should deal with Miss T's claim under the remaining terms of the policy. As Tradewise decided that Miss T's car was a total loss that means that, subject to the remaining terms of the policy, it should pay Miss T the market value of the car at the date of the loss, less the outstanding finance on the car, the salvage value and the excess due under Miss T's policy. As Miss T has been kept out of the use of that money, Tradewise should also pay interest on any sum paid to her.

If Miss T has continued to make the finance payments in relation to the car, Tradewise should reimburse her for those sums, from the date of her claim to the date of payment, with interest. Miss T should provide Tradewise with evidence of any finance payments that she has made.

As Tradewise declined Miss T's claim, she lost the use of a car. If it had dealt with Miss T's claim fairly and promptly from the outset, she would have been able to find a replacement car or have the recovered car repaired properly.

Miss T says that whilst she was without a car – until she arranged for the salvage to be returned to her and paid for minimal repairs - she used buses and taxis for two trips a day to take her young son to school and home again and paid for buses for her daughter to get to and from school. Miss T says that she also used buses and taxis for a small number of work- related trips. Miss T says that she didn't keep receipts, as it didn't occur to her that Tradewise would decline her claim.

Miss T made her claim on 23 April 2019 and I've seen that on 5 July 2019, she paid £180 to the salvage yard for the return of the car. That's approaching 11 weeks without a car. We'd usually expect an insurer to settle a claim like this within, say, two weeks. So, I think that Tradewise should pay Miss T compensation for loss of use of a car for weekdays for nine weeks – 45 days. Our usual approach in cases like this one is to award £10 a day for loss of use. So, I intend to direct Tradewise to pay Miss T £450 for the loss of use of her car.

Miss T says that she could only do minimal work shifts, as she needed her car to do her job. Miss T hasn't provided any evidence to support a claim for loss of earnings. And her policy doesn't cover business use. So, I don't intend to award anything separately for loss of use in relation to Miss T's use of car in relation to her work.

Miss T has also suffered distress and inconvenience in having her claim declined when it should have been dealt with. I think fair compensation for that, in addition to the award for loss of use, is £200."

Responses to my provisional decision

Miss T didn't make any further comments in response to my provisional decision. Tradewise didn't agree with my provisional decision. It said:

- It prefers the conclusions of its enquiry agent, which refers to the relationship between Miss T and the visitor who took one of her car keys as step-mother/step-son, as that was prepared before it declined Miss T's claim.
- It thinks that Miss T invited the visitor for a meal and a catch-up and, if she didn't trust him, it would have been prudent to have met him in a public place.
- It believes that Miss T and the visitor were on friendly terms and that she had previously seen herself as his step-mother for a period of 10 years.

- Miss T wouldn't have invited the visitor into her home if she hadn't considered him a friend or step-son.
- It didn't agree with the loss of use award as the claim wouldn't have been resolved in two weeks, given that the car wasn't released to the salvage agents until 22 May 2019 and it would have required a police report that was delayed pending prosecution. The visitor wasn't convicted until September 2019.
- It doesn't agree that it reimburse finance payments Miss T made as the policy requires that it pays the value of the car and any settlement straight to the finance company. The balance due to the finance company would have been reduced by Miss T's monthly payments, leaving a greater balance due to Miss T.
- It's happy to review any further evidence or to obtain a police report.

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.

Tradewise says that it's happy to obtain a police report, but it's had ample opportunity to pursue that if it wished to, so I'm proceeding on the basis of the evidence I have.

I've looked again at the evidence in relation to Miss T's relationship with the visitor who took one of her car keys. Tradewise prefers to rely on the conclusions of its enquiry agent. But as I said in my provisional decision, those conclusions aren't definitive.

In Miss T's witness statement, which is appended to the enquiry agent's report and which Miss T signed before Tradewise declined her claim, Miss T described the visitor who took one of her car keys as "...*the half-brother to my children*". That's consistent with what was said at the first notification of loss. The enquiry agent says that the visitor was "*like a step-child* [to Miss T]", but those appear to be the enquiry agent's words, not Miss T's.

Miss T has described the circumstances which led to the visitor being in her house. With the benefit of hindsight, Tradewise is right that it would have been prudent to meet in a public place, but that doesn't alter the outcome here.

I think that it's possible to have a visitor in one's home who is neither a family member nor a friend. Miss T has described how that occurred here. On balance, for the reasons I set out in my provisional decision and above, I'm not persuaded that Tradewise has shown that the visitor who took Miss T's key was either a member of her family or her friend. So, I don't think it's fair or reasonable for it to rely on the exclusion.

Tradewise says that it couldn't have dealt with Miss T's claim after two weeks as Miss T's car wasn't released to the salvage agents until 22 May 2019, it required a police report and the criminal proceedings weren't concluded until September 2019.

I don't think it would have been reasonable for Tradewise to delay settlement of Miss T's claim until criminal proceedings were concluded, but I take its point that it would have to wait for the police to release the car and for further information from the police.

It appears that the police released Miss T's car on 20 May 2019, as that's the day Tradewise instructed its recovery agent. I think Tradewise could reasonably have dealt with the claim within two weeks of that date, so 3 June 2019. That means that Miss T's loss of use claim is for weekdays from 3 June 2019 to 4 July 2019 - 24 days. As I said in my provisional decision, our usual approach in cases like this one is to award £10 a day for loss of use. So, I intend to direct Tradewise to pay Miss T £240 for the loss of use of her car.

If Tradewise had dealt with Miss T's claim promptly and fairly on, say, 3 June 2019, she wouldn't have continued to make the finance repayments in relation to her car. So, she's been kept out of the use of any repayments she made, and I think that Tradewise should compensate Miss T for that by paying her simple interest on the amount of any repayments she made from 3 June 2019 to the date of settlement.

Tradewise is right to say that it shouldn't have to reimburse any finance payments Miss T made as, in accordance with the policy terms, its settlement of the claim would first repay any finance on the car, so any repayments Miss T made would reduce the balance outstanding. So, Miss T would have the benefit of any finance payments she made in any event.

I've noted and considered what's been said, but I remain of the view that Tradewise hasn't established that it's fair and reasonable for it to rely on the exclusion set out above in order to decline Miss T's claim. So, it should take the steps I've set out below to put things right.

Putting things right

I now direct Tradewise Insurance Company Limited to:

- Deal with Miss T's claim under the remaining terms of her policy.
- Pay interest on any settlement at the simple rate of 8% per year from the date Miss T made the claim to the date it makes the payment.
- On production of evidence of finance payments, pay interest at the simple rate of 8% per year on the finance payments Miss T made from 3 June 2019 to the date of settlement.
- Pay Miss T £240 for loss of use.
- Pay Miss T £200 in relation to distress and inconvenience.

HM Revenue & Customs requires Tradewise Insurance Company Limited to take off tax from this interest. Tradewise must give Miss T a certificate showing how much tax it's taken off, if she asks for one.

My final decision

For the reasons I've set out above, my final decision is that I uphold Miss T's complaint. I now require Tradewise Insurance Company Limited to take the steps I've set out above.

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

Louise Povey
Ombudsman

