

The complaint

Mr H (represented by his solicitor, Mr L) says Admiral Insurance Company Limited wrongly declined the claim he made on his motor insurance policy after his car was stolen.

What happened

Mr H bought a car that was on sale for £15,000 from a private seller for £12,800. Two weeks later the car was stolen. Admiral rejected the claim after it found the car Mr H had bought wasn't the one with that registration and vehicle identification number ('VIN'). The genuine car was on sale with a garage, so it said the car Mr H had insured was a 'cloned' vehicle.

Admiral said Mr H was deceived by a fraudulent seller, so a policy exclusion about claims not being covered if possession of a car was gained by deception applied. It noted that Mr H got a copy of the car's V5C registration document from the seller, that he'd taken a mechanic with him to inspect the car, and that he'd had a check carried out into the car's history (an 'HPI' check) which brought up no concerns. But Admiral also said Mr H had told it that the VIN number on the V5 document didn't match the one on the car's windscreen.

Mr L told Admiral that Mr H *hadn't* said there was a mismatch between the VIN number on the V5 and the windscreen. He said Mr H's first language wasn't English, and that when he said the VIN numbers were 'similar', he didn't realise the word didn't mean 'identical'. Mr L also said the policy exclusion didn't apply, as the car wasn't stolen by deception. Admiral then said Mr H hadn't checked the VIN number on the engine. Mr L said that amounted to placing an unfair burden on a consumer who wasn't a car dealer.

In its final response letter, Admiral said the letter declining the claim should have been worded differently. It said the mechanic had advised Mr H to check the VIN on the engine, but Mr H hadn't done so. It also said Mr H didn't send the V5 document to the DVLA or tax the car and was unable to substantiate its purchase. It said a cloned car has no market value, and that Mr H should pursue the car's seller.

Mr L said the mechanic didn't tell Mr H to check the VIN on the engine. He accepted that the car was bought at a good price, but said that the seller had given Mr H reasons for wanting a quick cash sale (and had reduced the price accordingly). He said it was for the seller to send the V5 to the DVLA. He asked Admiral to clarify its assertion that Mr H hadn't substantiated the purchase. He also said as the seller was unknown to Mr H he couldn't be pursued.

One of our investigators reviewed Mr H's complaint. She said the policy doesn't cover theft where possession is gained by deception. She also considered whether Mr H reasonably believed he was buying a genuine car. She noted that he said he had some concerns about the car's history and thought it may have been in an accident, so he carried out checks before buying it. She noted that the HPI check showed the car's value at £21,000. She thought Admiral had carried out a thorough investigation of the claim and said it was unclear whether Mr H had carried out all reasonable checks, as there were inconsistencies in the statements on the file. So she thought Admiral had acted reasonably.

Mr L repeated that the policy exclusion didn't apply and said Mr H had taken reasonable

steps to ensure the car's authenticity. He said cars similar to the one he'd bought were on sale for as little as £12,495. The investigator said it would have been reasonable for Mr H to have checked the VIN on the engine. She said Mr H had told Admiral shortly after the theft that the mechanic had advised him to do that. Finally, the investigator said she thought the policy exclusion was clear, so in her opinion it was fair for Admiral to rely on it.

Mr L said Admiral initially didn't raise the issue of Mr H having ignored the mechanic's alleged instruction to him – and had in fact said in its final response letter that Mr H told it he *didn't* check the VIN on the engine. He also pointed out that Mr H hadn't made a statement in the true sense, by having a chance to read what Admiral had recorded and agree the content. Mr L also provided a signed statement from the mechanic, who confirmed that *he had not advised Mr H to check the VIN on the engine*. As the investigator's view didn't change, Mr L asked for a review of the complaint by an ombudsman, and it was later passed to me. I issued a provisional decision, upholding Mr H's complaint, as follows:

Policy exclusion

I've looked at the policy exclusion, which says Admiral will not pay for "loss or damage to your car or loss of money, where possession of it is gained by deception". Similar exclusions are common in car insurance policies. They're generally relied on when a policy holder's car is stolen in the type of theft where some kind of deception is used by the thief. I don't think the exclusion covers the situation where a consumer is tricked into buying a car by someone who provides false evidence to show the car is genuine and that he owns it.

VIN checks

I think Mr H showed he was serious about ensuring the car was genuine partly by checking that the VIN number on the V5 registration document matched the one on the car's windscreen. I think the initial conversation between Mr H and Admiral about this shows that there was some difficulty between them in communicating, probably because English isn't Mr H's first language. I think it's clear that when he insisted the numbers on the V5 and the windscreen were 'similar' he meant 'the same' (rather than different). And there would have been no reason for Mr H to proceed with the purchase if the VIN numbers hadn't matched. I don't think it's standard practice for an average consumer to check the VIN number on a car's engine – or even to know that it will be on there. So I think that in suggesting that Mr H should have done so (but didn't) Admiral is holding him to a higher standard than would be the case with an average consumer. It seems to have taken this approach because it believes that the mechanic who inspected the car for Mr H advised him to check the VIN on the engine, yet he failed to do so.

The file notes written by Admiral's advisor on 19 August 2019 show Mr H told him the engineer recommended checking the engine. The notes also state that Mr H said he carried out the engine check and found that the VIN numbers matched. Yet in Mr H's call with Admiral ten days later, he said he didn't think about checking the VIN in the engine.

There's a clear discrepancy between the account recorded by the advisor and the call with Mr H ten days later. We usually say that if two versions of events don't match, then the first one should be taken as more likely to be accurate as it's nearer to the date of the event. But in this case, we also have a signed statement from the mechanic, who says he didn't advise Mr H to inspect the engine for the VIN. The mechanic says he's never checked a VIN in an engine, even when buying cars himself. There's also the question of why any mechanic would advise a consumer to check something in an engine that had just been inspected. In my opinion, it's possible that Mr H was confused during the conversation with Admiral on 19 March 2019 and said something that wasn't accurate - or that the advisor misunderstood what he said or recorded it incorrectly. I think it's more likely than not that Mr H wasn't

advised to check the VIN on the engine. But in any event, I think he did enough by ensuring that the VIN on the windscreen matched the one on the V5 document.

Other checks

Motoring organisations and others recommend that purchasers should carry out various checks when buying a vehicle from a private seller. One of them is ensuring that the V5 registration document is checked. Mr H did that, and the V5 showed the correct name and address for the seller as well as other details (including the car's VIN). Mr H says the seller produced his driving licence showing his name, address and a photo of the seller. The mechanic confirmed that was the case in his statement. He also confirmed that he and Mr H met the seller outside the seller's address.

The other check purchasers are recommended to carry out is an HPI check of the vehicle, which will show any finance owed on the car, whether it has been stolen or is a total loss, or whether there are discrepancies in terms of mileage or registration numbers. In this case the HPI check was clear - but it showed the car was valued at £21,000.

Admiral thinks that was a cause for concern, although an HPI check isn't a valuation tool. The car was advertised by the seller at £15,000, and Mr H had checked online about the market value of similar cars. Although the asking price was within the range of prices Mr H found online, as it was towards the lower end of it, he thought that might mean the car had been in an accident. That's partly why he took a mechanic with him to inspect it.

The seller told Mr H he wanted a quick sale and that he'd drop the price to £12,800 if Mr H could pay him in cash. He'd already told Mr H in text messages that other buyers were interested, so I think there was some pressure on Mr H to make a quick decision. The mechanic had no concerns, and all the paperwork seemed to be in order. So I don't think it was unreasonable for Mr H to think he'd been lucky enough to get a bargain. Perhaps he could have taken time to consider whether the deal was too good to be true, but I can see why that didn't strike him at the time. I think many consumers would have acted as he did.

Proof of purchase

As Mr H agreed to a quick sale for cash, he had to get hold of the money quickly. He says he had £6,000 saved at home in cash. Although that may not be where most consumers would keep their savings, it isn't unheard of. Nor is the fact that Mr H borrowed cash from a friend, who confirmed to Admiral that he gave a loan to Mr H in cash.

I can see why Admiral found these circumstances suspicious, as the arrangement Mr H and his friend made is unusual and can't be verified. But there's nothing to show that Mr H didn't pay for the car in the way he claims to have done - or that his receipt, plus the other documents he's provided (including copies of texts from the seller) aren't genuine. And Admiral didn't decline the claim on the basis that Mr H didn't actually buy the car.

In summary

We think if a consumer makes reasonable checks before buying a car and then insures it in good faith, having no reason to suspect its false identity, the claim on the policy should be paid. I don't think the policy exclusion applies in the circumstances here, and I think Mr H carried out reasonable checks on the car. I think he considered why its price was lower than might have been expected. He may have been naïve in thinking he had such a bargain, but taking everything into account, I don't think he acted unreasonably at the time.

I understand why Admiral had concerns about the claim, but I don't think the discrepancies it

identified were sufficient for it to fairly and reasonably decline the claim. Consequently, subject to any further comments from the parties, I think Admiral should deal with the claim (in line with all other policy terms and conditions) and refund to Mr H the sum he paid for the car, plus interest. As Mr H was distressed and inconvenienced by the decline of the claim, I also think it would be reasonable for Admiral to pay him £200 compensation.

I asked the parties to comment on my provisional findings. Mr L said Mr H accepted them but had some extra points to make. He said Mr H's personal items were stolen when the car was taken, and he'd like the policy's £150 cover for these to be paid. He said Mr H would also like his legal expenses to be covered, as it wouldn't have been possible for Mr H to put his case forward without help from a solicitor. Mr L said Mr H had suffered ill-health over the last two years due to Admiral's handling of his claim. So he thought the £200 I'd proposed for distress and inconvenience should be raised significantly (to £5,000 as a minimum).

Admiral said it hadn't insured the car Mr H claimed to have bought. It said he told it he got the V5 from the seller and sent it to the DVLA, but he didn't tax the car. Admiral didn't accept that he'd proved ownership of it and said he'd paid £10,000 less than it was worth. It said there were discrepancies between him and Mr K in terms of their meeting around the date of the theft. And it repeated its concern about Mr H not having checked the VIN in the engine.

I issued a second provisional decision, as follows:

Admiral's comments

I set out my view on Mr H not checking the engine VIN in my provisional decision. I also set out our settled view on it being fair and reasonable for a claim to be paid if a consumer has made reasonable checks before buying a cloned car in good faith. Admiral hasn't said anything new on these issues. There are discrepancies in the accounts of Mr H and Mr K about their meeting, but in my opinion, the main point in Mr K's evidence is that he confirmed giving Mr H a loan of £6,000 in cash.

Mr K has a receipt for the car's purchase, but I agree that he paid less than could have been expected for it. Mr H was interested in the car in the first place due to its low price. But he made the HPI check and engaged a mechanic for advice, so any concerns he had about that could be dealt with, and they were. I think the seller gave him plausible reasons why he wanted a quick cash sale. Sometimes, there's a genuine bargain to be had. The documents all seemed to be in order, and the seller seemed genuine, so I don't think it's fair to say that the price of the car alone should have led Mr K to conclude that he was being deceived.

It was for the seller to send the V5 document to the DVLA. I haven't seen anything in the file that shows Mr H said the seller had given it to him and that he'd sent it. There are notes to show that he said he didn't have the V5, plus a note that says Mr H provided a copy of the V5 to Admiral. Whether Mr H got the V5 or not, there's evidence that he was able to check all the relevant details on it before he agreed to buy the car. The mechanic said the seller produced his photo driving licence as well. Although I think Mr H should have tried to tax the car before it was stolen, I don't think omitting to do so within two weeks of the purchase is a basis for declining the claim.

Mr L's comments

Admiral confirmed recently that Mr H made a claim for the personal items that were stolen with the car. It says it will cover the claim up to the policy limit, subject to proof. So if I were to issue a final decision in due course upholding Mr H's complaint, he'd need to provide evidence of the lost items to Admiral for it to consider that part of his claim.

There's no doubt that Mr L has provided valuable advice and assistance to Mr H, but it was Mr H's choice to seek paid advice. I don't think it was necessary for him to do that. In my opinion, a lay person fluent in English could have helped him with any language difficulties - and there are organisations that offer free legal advice and casework support to consumers in Mr H's position. We provide free translation services. We also try to identify gaps in the evidence, in order to seek any further relevant details from either party as necessary. Taking all this into account, I don't think Admiral should be required to pay Mr H's legal costs.

Mr H told Admiral during the claims process that he had a medical condition, and that if his claim wasn't upheld, he could end up in hospital as a result. Mr L told us that Mr H suffered chest pains and anxiety after the theft and had to attend hospital, and that the medication for his pre-existing condition increased dramatically. It's not unusual for some consumers to feel great anxiety after an incident such as a theft – or whilst going through a claims process. But to some extent, that's unavoidable – and it isn't the fault of the insurer.

I think Admiral had the right to carry out full enquiries into the claim. In my opinion, it was a hard one to resolve. I think the file notes show that it wasn't straightforward for Admiral to reach a conclusion about it. The police thought Mr H's claim was genuine, as did Admiral for much of the time. So I think the process was bound to take longer than usual to complete. I don't think Admiral can be held responsible for any stress Mr H had to face as a result of the theft or its enquiries into the claim. Mr L says Mr H was embarrassed when he had to repay Mr K by borrowing from a family member during this time. I understand that he may have found that difficult, and that being left out of pocket following the claim's decline has caused him ongoing financial worry.

Mr H recently provided evidence from his GP to show that he had no record of anxiety or any other symptom of stress until after the theft in 2019. The GP says Mr H's medication for that is continuing, as the symptoms of his illness remain. Although I think Admiral should have paid the claim, in my opinion, it's only partly responsible for Mr H's anxiety and the effects it has had on him. I don't agree with the large increase in compensation that Mr L has proposed, but I think raising it to £500 would be reasonable.

Admiral's solicitors commented on my second provisional decision. They supported Admiral's stated view that as the car was cloned, legally it had no market value. The solicitors thought the correct remedy was for Admiral to return the premium to Mr H.

Mr L said Admiral should pay Mr H £150 for the car's contents without evidence from him. He said Mr H had been unable to get full legal support or sufficient advice free and provided evidence that he'd tried to do so. Mr L accepted that we don't award damages in the way a court does. But he said the rules that govern this service allow an ombudsman to award a sum that's fair, which may be *more* generous than a court would award. And as Mr H had paid £75 for the GP notes he provided, Mr L thought that sum should be refunded.

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 accept that the cloned car had no legal status and therefore no market value, but our remit is to decide what's fair and reasonable, to prevent what would otherwise be unfair outcomes. I've already explained fully above why I think the claim should be paid – and I proposed that Admiral should refund Mr H what he paid for the car as its market value doesn't apply here.

I think it's reasonable for Admiral to ask Mr H for evidence of the items that were lost when the car was stolen. Mr L says Mr H may have the necessary proof. If he doesn't, I think it's for Admiral to decide whether it will pay all or part of the £150 set out in the policy anyway.

I'm still of the view that Admiral shouldn't have to pay Mr H's legal fees. We don't need a consumer to provide submissions to us of the quality expected from a legally qualified practitioner. And I still don't think Admiral's responsible for all the stress and anxiety suffered by Mr H. I think the seller's deception, the loss of the car *plus* the money paid for it - and the need to go through the claims process, would have caused Mr H great anxiety. Mr H was left with a debt that he couldn't repay without borrowing more money, which caused him further stress. The GP notes show that later on, Mr H also lost his job, causing him further worry, but there's nothing to show that it was related to the declined claim.

I think Admiral had the right to investigate the claim robustly, and challenge any discrepancies, even though that will have caused Mr H even more worry and stress. But I think some aspects of the way it dealt with the claim (as set out above) are likely to have caused Mr H avoidable frustration and anxiety. In my opinion, £500 is a fair and reasonable sum to reflect the distress and inconvenience Mr H faced as a result of Admiral's actions. As the GP report was helpful in my consideration of whether the initial £200 I'd proposed was sufficient - and whether Mr L's proposal for a much higher sum than £500 was appropriate - I think it would also be fair and reasonable for Admiral to refund the cost of it to Mr H.

My final decision

My final decision is that I uphold this complaint. I require Admiral Insurance Company Limited to do the following:

- Refund the sum Mr H paid for the car, subject to the policy's remaining terms and conditions, and add interest to that sum, at the simple yearly rate of 8%, from the date of claim to the date of settlement
- Pay Mr H £500 for distress and inconvenience
- Pay Mr H £150 for the loss of his personal items, subject to evidence
- Refund Mr H £75 for the GP report he provided

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 November 2021.

Susan Ewins
Ombudsman