

## The complaint

Mr H complains that Zenith Insurance Plc declined his claim under his car insurance policy following the theft of his car.

## What happened

In November 2020 Mr H's car was stolen and crashed, resulting in it being written off. At the time of the theft the car was parked at his daughter's address, as she had borrowed it whilst her car was being repaired at a local garage. Mr H says his daughter arranged for temporary insurance cover for a period of two days whilst she used his car. After the two days the car remained at her address until her mother could collect it.

Mr H was in hospital when he loaned his daughter the car. He was diagnosed with the coronavirus, which meant he couldn't collect the car, and neither could his wife as she had to isolate.

The thief was known to Mr H's daughter and had access to her home. The keys were stolen, which allowed the car to be taken. This individual was subsequently arrested and charged with theft and crashing the car.

Zenith says as the car was at Mr H's daughter's address, and she was the last to drive it, this meant she was in charge of the car at the time it was stolen. It says the terms of its policy say cover is not provided in these circumstances. Zenith declined the claim based on this exclusion.

Mr H disagreed and referred the matter to our service. Our investigator upheld his complaint. She didn't think it was fair for Zenith to rely on this exclusion and decline the claim in these circumstances. She thought it clear the intention was for the car to be collected, but due to Mr H's illness and his wife needing to isolate, this wasn't possible. Our investigator thought these circumstances were exceptional and didn't think it was fair for Zenith to decline the claim for the reason it gave.

Zenith disagreed. It says Mr H's daughter could have simply extended her temporary insurance when it became clear there would be a delay. Alternatively, it says she could have driven the car back to Mr H's address, in which case Mr H's cover will have been in place.

Our investigator didn't change her view. So, Zenith asked for an ombudsman to review the complaint.

It has been passed to me to decide.

I issued a provisional decision in December 2021 explaining that I was intending to not uphold Mr H's complaint. Here's what I said:

*provisional findings*

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*There is no dispute that Mr H's car was stolen. My remit here is consider whether Zenith has reasonably shown that the policy terms exclude his claim for the reason it has given.*

*The policy terms under the section entitled "General Policy Exclusions" say:*

*"You are not covered under your policy for any of the following:*

*Who uses the car:*

*Any injury, loss or damage which takes place while the car is being:*

*- Driven by or in the charge of any person not covered by your Certificate of Motor Insurance."*

*Mr H's certificate of motor insurance shows he and his wife are entitled to drive his car. It isn't disputed that the policy doesn't cover his daughter. But evidence has been provided to show the temporary insurance cover she arranged for the two-day period when she drove his car.*

*Mr H's wife told us her daughter was expected to return the car on the Friday after hers had been repaired. The repair took longer than expected. Mrs H says her daughter was to arrange additional temporary cover if the car wasn't fixed by the following Monday. I understand this was if she needed to use Mr H's car after the weekend.*

*No further insurance cover was arranged by Mr H's daughter after the initial two days cover ended. Mr H's car was then parked on her driveway and it was from here that it was stolen.*

*I acknowledge Mr H's account that his daughter only drove his car during the period when she had arranged temporary cover. This isn't in dispute. But Mr H believes his policy should cover the theft and damage to his car regardless of his daughter having been the last person to drive it, or that it was parked at her address.*

*I have thought about whether the exclusion relied upon by Zenith is clear in the terms and conditions. And whether it's fair, in these circumstances, for it to decline the claim for the reason given.*

*Having considered the terms, I think they're clear that there is no cover when the car is in the charge of someone not covered by the certificate of motor insurance. Mr H gave permission for his daughter to use his car. I think this reasonably means his daughter was "in the charge of" his car until this was returned or collected. She then drove the car whilst under the cover of her own temporary policy. It was parked on her driveway, from where it was subsequently stolen. I understand the individual who stole the car had access to Mr H's daughter's home, which enabled him to take the keys.*

*Clearly this is a very unfortunate situation. The theft of a car will be stressful for anyone to deal with, but given Mr H's hospitalisation at the time, I can understand this was very upsetting for him and his family.*

*I don't dispute that Mr H's daughter only intended to drive his car, whilst she was insured to do so. I accept his wife couldn't pick up the car because she was isolating due to the coronavirus. But I think Zenith's argument that the car was in the charge of Mr H's daughter,*

*when it was stolen, is persuasive. This is because its accepted that she borrowed the car, that she was the last to drive it and it remained parked at her address. The car hadn't been returned to Mr H and neither he nor his wife had taken charge of it.*

*I have considered the circumstances around why the car remained at Mr H's daughter's address. But the policy terms are clear that there is no cover when the car is in the charge of a person not covered by the certificate of motor insurance. Mr H's daughter isn't covered under his policy.*

*Zenith makes the point that Mr H's daughter understood she needed to have cover whilst the car was in her possession. Hence why she initially arranged for temporary cover to be in place. It says she could've extended this cover whilst the car was still in her possession. Alternatively, it says she could've driven the car back to Mr H's address, where it would have been covered under his policy.*

*Mr H says his daughter didn't want to drive his car back when she wasn't insured. I accept his point here. But it was her decision to only arrange cover for a period of two days. I think Zenith's point is reasonable that options were available to ensure the car remained insured. And that Mr H's daughter was in charge of his car when it was stolen.*

*Having considered all of this, I think the terms are clear and Zenith's view is persuasive that Mr H's daughter was in charge of his car when it was stolen. I accept he took steps to ensure his daughter arranged her own insurance. But this didn't cover the full period she was in possession of his car. It may be that by not driving it, the belief was insurance cover was in place under Mr H's policy. But I don't think Mr H has shown that cover was or should have been in place as he suggests.*

*Mr H didn't contact Zenith to query if cover was in place when lending his car to his daughter. And as above, I think the terms are clear in excluding cover here. I don't think the circumstances Mr H describes, although unfortunate, mean the policy terms cannot be relied upon by Zenith.*

*In summary I think Zenith has fairly relied on the terms of its policy when declining Mr H's claim. So, I can't reasonably ask it to do anything more to resolve this complaint.*

I said I was intending to not uphold this complaint.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision. But neither party responded.

### **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.

As neither party has made any further submissions or provided further evidence for me to consider, I see no reason to change my provisional findings.

So, my final decision is the same as my provisional decision and for the same reasons.

### **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 H to accept or

reject my decision before 16 March 2022.

Mike Waldron  
**Ombudsman**