

The complaint

Mrs D and Mr S complain that Covea Insurance plc wrongly declined a claim after their car was stolen.

What happened

Mrs D has a car insurance policy underwritten by Covea. Mr S is also named in the policy as a driver of the vehicle in question.

In June 2021, Mrs D made a claim after her car was stolen. The incident must have been shocking and terrifying for Mrs D.

In short, she was driving out of a social club where she'd been carrying out some voluntary work. She stopped in a short driveway adjacent to the road in order to close and lock the gate to the club car park behind her.

Mrs D had left her car keys in the ignition and her handbag – with phones, bank cards etc. – inside the car. Whilst she was at the gate, a man ran to her car, jumped in and drove off.

Mrs D says she had time to grab the front door of the car but had to let go as the man drove off, for fear of being dragged along the road.

Mrs D reported the incident to the police using a phone provided by a passer-by. And she later made a claim to Covea.

Covea carried out some investigations and then declined the claim. They said Mrs D had left her car open and unattended, with the keys inside. And they referred Mrs D to exclusions in her policy which allowed them to decline a claim in those circumstances.

Mrs D thought this was unfair and made a complaint to Covea. And when they maintained their position, she brought her complaint to us.

Our investigator looked into it and thought Covea hadn't acted fairly and reasonably in their handling of Mrs D's claim. He said they should reconsider the claim as Mrs D hadn't left the car unattended. And he thought they should pay Mrs D £150 in compensation for her trouble and upset.

Covea disagreed and asked for a final decision from an ombudsman.

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.

There's no real dispute here about the facts of the case. Mrs D has acknowledged that she left the keys in the car when she went to close the gate. That's how the thief was able to jump into the car and drive away.

Covea's investigator measured the distance from the gate to the front door of the car at around eight metres. Looking at the photographs in his report, that must be the maximum distance from the end of the gate, when fully open (it opened inwards into the car park) to the front end of the car door.

As the investigator says in his report, Mrs D was likely closer than eight metres at most if not all times during the incident. The investigator says she was five metres from the driver's door of the car when she was locking the gate.

Given that the average car is around four and a half metres long, tip to tail, I think that might be a slight overestimate, but I don't think a metre or two here or there is relevant, for reasons I'll explain.

The policy says, quite clearly, that Covea will not cover any loss if:

"...(the) ignition keys... are left unattended in or on the... car whilst it is unattended."

Or where:

"...(the) car was not switched off, properly locked or if any door, window, roof opening... was left open or unlocked."

And the policy – again perfectly clearly – says the customer must:

"... take all reasonable steps to protect the car from any loss or damage."

That kind of exclusion or condition are common in car insurance policies. They're flagged and prominent in the policy booklet and they're referred to in the insurance policy information document (IPID) which summarises the significant terms of the policy and is sent to the customer at purchase and renewal.

In my view, the second exclusion I've quoted above is pretty much redundant. Any normal reading of that clause, when you take into account the other exclusions set out in the policy (especially the one quoted first above), would be that you need to lock and secure your car when you park it and leave it. That's not what Mrs D was doing in this case.

So, given that we know the keys were in the car, the question for me to decide is whether Mrs D left her car "*unattended*". And whether she took *reasonable* steps to protect it from loss or damage.

I don't think it's fair or reasonable to say that Mrs D left her car unattended. She was there throughout the incident, saw the thief approach and enter her car, and was close enough to get a hand on to or inside the car door before it was driven away.

I can understand Covea's position. And I'll concede that it's difficult to define exactly how far away from their car someone would need to be, in what individual circumstances, in order to say the car was unattended.

I'd say someone leaving their keys in their car and going into a shop, or going to pay for petrol, for example, might *usually* be described as leaving their car unattended – even if they were only gone for a very short time. Although there might be other very specific individual

circumstances that would need to be taken into account.

I think the key question in these cases is whether the driver was in a position to deter the theft of the car, or to make it unlikely. If you leave your car out of sight, with the keys inside, for more than a short moment, you might rightly be said to have left it unattended. In that case, a thief has a window of opportunity to take the car without challenge and/or without being seen.

In Mrs D's case, she was right there when the theft took place. She saw the thief approach and enter the car (she wasn't turned away attending to the gate's lock at the relevant time). She was able to grab the car and challenge the thief. She was able to see him close up and presumably provide a description - and he would have been aware of that.

So, I'm satisfied Mrs D was in a position to deter the theft of her car and to make it unlikely. The fact that the thief went ahead and took the car doesn't prove there was no deterrent because of Mrs D's close proximity. He simply decided to ignore Mrs D's hand on or in the car and to risk being recognised in future.

The circumstances aren't exactly the same obviously, but I'm sure Covea wouldn't decline a claim where the perpetrator physically assaulted or threatened a driver in order to steal their car. Mrs D is relatively elderly and was in no position to physically stop the thief, but her presence at such close proximity would, in my view, have been a deterrent to the crime nonetheless.

So, I don't think Mrs D can reasonably be said to have left her car unattended. And I don't think it would be fair to say that she hadn't taken reasonable steps to protect her car from loss or damage.

I might take a different view if the policy terms said that Covea would not cover any theft where the keys were inside or on the car and the driver wasn't inside or with the keys. As long as those terms were very clearly flagged up to the customer before they took out the policy.

In that case, the customer would know in advance that they could not leave their keys in the car under any circumstances, even momentarily. And Covea might reasonably say that the terms excluded this kind of loss. Insurers are entitled to decide what risk they wish to cover at what price.

But as things stand, the terms are clear. The exclusion applies where the keys are in the car *and* the car is left *unattended*. And I'm satisfied most reasonable observers would *not* agree with Covea that Mrs D had left her car unattended when she went to close the gate behind her.

Putting things right

I agree with our investigator that Covea must now reconsider the claim, on the basis that the exclusions around leaving the car unattended and the condition about taking reasonable steps to prevent loss or damage *do not* justify a decision to decline the claim in this case.

I also agree that Mrs D and Mr S have experienced a degree of frustration and stress about the decision to decline the claim and that £150 would be fair and reasonable compensation for their trouble and upset.

My final decision

For the reasons set out above, I uphold Mrs D and Mr S's complaint.

Covea Insurance plc must:

- reconsider Mrs D and Mr S's claim; and
- pay Mrs D and Mr S £150 in compensation for their trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr S to accept or reject my decision before 29 March 2022.

Neil Marshall
Ombudsman