

## **The complaint**

Mr B complains that Aviva Insurance Limited (trading as General Accident) unfairly declined his claim on his motor insurance policy.

I refer to General Accident as GA and I include claims-handlers and others insofar as I hold GA responsible for their acts or omissions.

## **What happened**

The subject matter of the claim and the complaint is a luxury sports utility vehicle, first registered in 2018.

Mr B acquired the vehicle in July 2020. For the year from July 2020, Mr B had the vehicle insured with GA. For the year from July 2021 he renewed the policy.

Unfortunately, on about 10 September 2021, Mr B reported that someone had stolen the vehicle.

By a letter dated 24 September 2021, GA declined to meet the claim, saying that the vehicle hadn't had an active tracker as required by the policy terms.

Mr B contacted us later in September 2021. Through us, he complained to GA that it hadn't made that requirement clear when he took out the policy. By a final response dated 5 November 2021, GA turned down the complaint. We investigated the complaint.

### *our investigator's opinion*

Our investigator didn't recommend that the complaint should be upheld. The investigator didn't think GA had acted unfairly or done anything wrong.

### *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr B and to GA on 31 March 2022. I summarise my findings:

After he bought the policy, Mr B had been back online on about 3 September 2020 and again in June or July 2021. So I considered that the requirement for an operational tracking device was clear for him. So Mr B could make an informed decision whether to renew the policy. And he did renew the policy with the requirement for an operational tracking device.

Subject to any further information from Mr B or from GA, my provisional decision was that I didn't uphold this complaint. I didn't intend to direct Aviva Insurance Limited (trading as General Accident) to do any more in response to this complaint.

Mr B disagreed with the provisional decision. He says, in summary, that:

- The insurer had a duty of care to bring to his attention the need for an active/subscribed tracker.
- The insurer took no additional steps to verify that the particular tracker was on their approved list before accepting him for cover and taking the premium. That would've made it clear to him that he had made a genuine mistake in believing that the tracker on the car was sufficient. The fact that he said '*other*' during the application might've at least raised a question about whether the tracker was appropriate - especially as there was no reference to it needing to be "*in operation and any subscription to the system operator ... maintained*"
- At no time did the insurer request evidence that the tracker had a subscription. Surely they would have required this to satisfy the requirements of the policy.
- The insurer has yet to meet our request to provide screenshots of the application process.
- Whilst undertaking the completion of the application, he responded by ticking "*other tracker*". He was not aware at this stage of any consequences or commitments in selecting this option. He believed that the vehicle had a factory fitted tracker that he was drawing to the insurer's attention. He was not aware of any obligation to subscribe to this facility. The insurer had an obligation and duty of care to draw the need for subscription to his attention.
- The application process made no distinction between an active or functioning tracker.
- The insurer is required to provide clear, fair and not misleading information to enable him to make a decision whether to take out the cover offered. The insurer should not be relying heavily on information provided after.
- When he renewed the policy in 2021, he didn't need to check the content of the policy again.

GA didn't respond to the provisional decision.

### **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.

From what Mr B and GA have each said, he went online to buy the policy. He entered his information and GA recorded it including the following:

*"Security: **Manufacturer fitted**  
Tracking device: **Other Tracker**  
Modifications: **No modifications**  
Vehicle's overnight location: **Drive**"*

GA hasn't provided screenshots of Mr B's journey online in July 2020. But I find it likely that GA had asked him if the vehicle had a tracking device, and when he answered that it did, GA gave him a list of types of device, from which Mr B selected "*other*".

Whilst there's no evidence of what was in that list, I keep in mind that the purpose of any tracking device is to transmit its location. So I don't find it likely that GA's list made a

distinction between an active (or functioning) tracker and an “other” tracker.

The policy documents included the information Mr B had given, the policy schedule and the policy terms booklet.

Section 1 of the policy terms related to loss of or damage to the vehicle, including by theft.

I’ve seen a policy schedule for the year from 17 July 2020. It included the following:

*“We will not pay under Section I of the policy for loss of or damage to Vehicle Registration No ...18... by theft unless at the time of the theft a General Accident approved tracking device is fitted and in operation and any subscription to the system operator has been maintained”*

As the registration was an “18” plate, I find it likely that it was the original registration of the vehicle.

From a later policy schedule, I find that Mr B had changed the registration of the car. That later policy schedule was for the period from 3 September 2020 to 16 July 2021. It included the following:

*“We will not pay under Section I of the policy for loss of or damage to Vehicle Registration No ...Y by theft unless at the time of the theft a General Accident approved tracking device is fitted and in operation and any subscription to the system operator has been maintained.”*

So I find that - on about 3 September 2020 – Mr B had gone back online to tell GA the new registration number of the vehicle.

I’ve seen a renewal email from GA to Mr B on 20 June 2021. It didn’t say that the policy would renew automatically. Rather it said that if Mr B wished to continue cover he should log into his account and confirm renewal. As the policy was renewed, I find that Mr B had gone back online in June or July 2021 and accepted the renewal.

I’ve seen a policy schedule for the year from 17 July 2021. It included the following:

*“We will not pay under Section I of the policy for loss of or damage to Vehicle Registration No ...Y by theft unless at the time of the theft a General Accident approved tracking device is fitted and in operation and any subscription to the system operator has been maintained.”*

I don’t regard the policy schedules as “small print”. Rather I regard them as the documents a policyholder would read first to check what cover he had bought.

After he bought the policy, Mr B had been back online on about 3 September 2020 and again in June or July 2021. So I consider that the requirement for an operational tracking device was clear for him. So Mr B could make an informed decision whether to renew the policy. And he did renew the policy with the exclusion of cover for theft unless there was an operational tracking device.

So, whilst I understand the enormity of Mr B’s loss, I don’t find it fair and reasonable to direct GA to pay the claim or to do any more in response to this complaint.

**My final decision**

For the reasons I've explained, my final decision is that I don't uphold this complaint. I don't direct Aviva Insurance Limited (trading as General Accident) to do any more in response to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 June 2022.

Christopher Gilbert

**Ombudsman**