

The complaint

Mr B has complained that Ageas Insurance Limited (Ageas) declined a claim on his commercial motor insurance policy following the theft of his van.

What happened

Mr B's van was stolen so he called his insurer Ageas to make a claim. Ageas declined the claim as it said that during the course of the investigation Mr B had provided false information in a bid to influence it to accept his claim.

Mr B said this wasn't true and complained. He said his van had been stolen whilst both he and his father were working out of the van. He said any anomalies about how he'd described what happened had been corrected once he'd confirmed the exact details of what happened with his father.

Ageas said both Mr B's explanation of what happened when he first called up, and when he amended his statement after speaking with his father, didn't match the CCTV footage that had been provided. It said that Mr B's version of events contained inaccuracies and were misleading.

Mr B brought the complaint to this service. An investigator reviewed this complaint and asked Ageas what would happen if it was asked to reconsider the claim. Ageas advised the investigator that the claim would still be declined. It said the keys were left in the van, a scenario that the policy terms and conditions excluded from cover. So, our investigator reviewed this complaint in full and having considered everything, felt Ageas was acting unfairly. The investigator said that even though there were inaccuracies in Mr B's version of events, it wasn't enough to invalidate the claim. The investigator also said Mr B and his father were close enough to the van for it to be deemed as "attended". So, our investigator said Ageas should now pay the claim in full, plus 8% interest from the date of the theft.

However, Ageas doesn't agree, and its asked for an ombudsman to review the complaint.

I issued a provisional decision on this complaint on 13 May 2022. That provisional decision is below and forms part of my final decision.

What I've provisionally decided and why

It's our role to make sure Ageas has made a fair and reasonable decision when it declined the claim. Our approach is to review Ageas's actions and to decide whether it has done enough to fairly and reasonably decline Mr B's claim in line with the available evidence and the terms and conditions of his policy.

The circumstances of the theft

Ageas says Mr B provided false information to influence the claim. It says that as per its terms and conditions it can "refuse to pay the whole of a claim if any part is in any way fraudulent, false or exaggerated". However, Mr B says that he didn't provide false

information. He says as everything happened so quickly, he wasn't clear about what happened. But that when the circumstances of the theft were clarified to him, he called Ageas and corrected any factual errors he'd made.

There were a number of calls with Mr B following the theft, and I've listened to them all. In the first call Mr B explains that he was with his father washing wheelie bins for a customer. He says the van was parked and both the sliding side door and the back doors of the van were open. There was a power washer inside the van and the power washer hose was running out of the back doors. His father was washing the bins at the back doors of the van. He says the side door was open as he'd opened it to switch on the power washer. Mr B says he had exited the van to run into the customer's house. He said the keys were in a small bag with his phone and money and were on the ground where his father was working. Ageas spoke to Mr B three times that day, and the story stayed the same. During the last call Ageas made Mr B aware of a CCTV video of the theft it had found online, and it asked Mr B if he wanted to add anything to his version of events. Mr B said no.

A few hours later Mr B called Ageas and said that he'd spoken to his father and he wanted to amend his version of events. He said that his father had told him that the keys were not in a bag at the back of the van. He said they were in the bag, but the bag was on the front seat of the van. Mr B said he thought he took the bag out of the van, but he said his father has told him this wasn't the case. At this point Ageas said that it had gone through the circumstances with him three times, and asked Mr B if he now he wanted to change his version of events. Mr B said yes. Ageas asked Mr B to run through the circumstances again, specifically asking Mr B whether the keys were in the ignition, or on the seat. Mr B says the keys were on the seat. Ageas asked whether the power washer or the water pump needed the van to be running to work. Mr B said no, and Ageas advised Mr B it would review the situation again.

In the final call with Mr B, Ageas says that it had reviewed his version of events, alongside the CCTV. It said Mr B's version of events didn't match the CCTV footage of the theft. Mr B is very confused by this. He said his van was stolen and he wants to claim. He asked Ageas if it thinks he's lying. Ageas said it had given him a number of opportunities to give his version of what happened. It said it's run through the circumstances a few times, and his version of events doesn't match what's on the CCTV, so there's no cover for the claim.

Ageas has expanded this a bit further in its correspondence with this service. It says:

- Mr B's version of events did not match what was shown on the CCTV footage. It says the bag was clearly not at the back of the van as the CCTV shows the thief walk across the road, get into the van and drive off very quickly. There was no pickup of a bag at the rear of the vehicle.
- Ageas also says that it's clear the keys were in the ignition and this is shown by how quickly the thief drove away. Ageas says the CCTV shows the headlights were on and this supports the theory the van was running at the time it was stolen. Ageas says if the keys had been removed the thief would not have been able to gain such easy access to the vehicle and therefore drive off in a matter of seconds
- Ageas confirms Mr B's father was at the rear of the vehicle, but it says he does not see the thief approach. It says the back doors were open and this would've blocked his view and Ageas says that there doesn't seem to be any deterrent to the theft regardless of how close Mr B or his father were to the vehicle.
- Ageas says that it's likely the thief could see and/or hear the vehicle engine running and knew it would be an easy theft – especially as the owner of the vehicle would not have seen the thief approach the vehicle.

- Ageas says that after reviewing this CCTV, it gave Mr B the opportunity to see if there was anything he needed to add – he advised no and continued with his original version of events. Ageas says Mr B only changed his version of what happened when it advised that it had seen the CCTV. It says this is a clear case of false information being provided in a bid to influence the claim.
- Ageas says it wouldn't extend cover for theft when no-one was in the van, unless all windows, doors and roof openings are closed and locked and keys removed.

Ageas has provided two CCTV clips which I've reviewed a number of times. The first CCTV clip is a side view and starts as the van is being driven away. You can clearly see Mr B's father stumbling after the van, as it speeds away with all doors open and the power washer hose/gun trailing behind it. Mr B's father shouts at his son, who at this point arrives at the scene.

The other CCTV clip, although slightly blurred, actually gives a clearer picture of what happens. You can see the van, and Mr B exiting the passenger's side of the van. You can see wheelie bins at the back and side of the van. It looks like Mr B picks up a bin and walks off to the right. At this point a person crosses from the opposite side of the street, opens the driver's door, gets in and drives off. You can see the water from the power washer gun spray up in the air and a person at the back stumbling after the van. As the van speeds off another person (Mr B), comes into view. The video clips provided by both parties showing the theft are the same, but the version provided by Mr B is slightly longer and catches a snippet of a conversation between people who are watching the video of the theft. In it a woman clearly says she was "stood outside" when it happened.

So, the question is whether Ageas did enough to decline the claim based on the evidence provided. We can take it from the video evidence that the key was more likely than not in the van, and not in a bag at the back as suggested by Mr B initially. The thief goes directly to the driver's door. The thief doesn't go to the back of the van first. Ageas says Mr B deliberately misled it with this statement. When we spoke to Mr B he said that the key could've been anywhere. He said that depending on who's actually washing, or who's taking calls and doing administration etc, both he and his father drive and they tend to leave the key on the floor, in the bag, on the seat or in the ignition.

Ageas is adamant the key was in the ignition. It says the theft happened so quickly; the van had to be running. If so, the key had to be in the ignition. But I can't be sure. If you look closely at the CCTV, the video clip has actually been speeded up. The footage is actually moving at twice the speed of real time, so even though the theft looks to have happened very quickly, it actually didn't happen as fast as the video clip would suggest. Looking at the timings I'm not so sure it's as clear cut as Ageas think and the thief could realistically have had time to pick up the key from the seat and start the van.

Ageas also says as the headlights were on, this means the van was definitely running. To me it does look like the headlights are on. But on this particular type of van, the headlights do remain on, for up to 10 mins after the key has been removed. And all lights will stay on for longer if any/all doors are open. So, in short, the van doesn't need to be running for the headlights to be on. And this puts a question mark over the assumptions Ageas has made about whether the van was running at the time.

So, I'm not convinced Ageas' conclusions are as strong as we are first led to believe. I agree it's more likely than not the key was somewhere in the front of the van. But even Mr B when we asked him isn't sure whether the key was in the ignition or even if the van was running. So, the key could also have been on the driver's seat as he suggested when he amended his version of events.

This confusion about the key doesn't necessarily mean Mr B was deliberately misleading Ageas. Mr B just had his van stolen and as we can see he was actually away from the van when this happened. I've listened to all calls and I do think there's certain hesitation. Yes, I agree it's clear the keys were not in a bag at the back of the van. But speaking to Mr B it's clear himself and his father leave the keys in numerous places. And as they work in or around the van all the time, it's clear they thought this was a reasonable thing to do. Further to this, it may be that Mr B changed his version of events when the CCTV evidence came to light. But he says the keys were in the van in the amended version of events, and the policy excludes cover for the loss of the van when the keys are left in or on the vehicle. So, even if he did deliberately amend the story after the video came to light, it wouldn't have gained Mr B any advantage or led to the claim being paid out. So, I can't say for certain that Mr B deliberately misled Ageas in order to influence the claim. Further to this, it's now clear that his amended story could very well be what actually happened. The questions around the speeded-up video clip and the headlights, call into question Ageas' assumptions. And Mr B actually sent Ageas the footage from the CCTV, after he had a call with them. So, I'm not sure this points to a man who is trying to deliberately mislead his insurer.

Ageas says that Mr B "provided false information in a bid to influence us to accept the claim". And under the policy terms and conditions this means Ageas can refuse to pay the claim. But in order to impose this term on Mr B, Ageas would have to be able to prove that he did provide false information.

My role is to decide if Ageas has done enough to exclude this claim using this specific term. And I'm not confident that Ageas has done enough to prove this. I agree that what Mr B initially said wasn't correct. But Mr B wasn't actually at the scene when the theft occurred. So, he was never going to have a true version of events. His amended version of events is plausible. And it was for Ageas to investigate this in full, including, but not limited to interviewing Mr B's father and the potential witness we hear at the end of the video clip. But there is no witness statement, nor can I see there was any attempt to get one. The decision to decline seems rushed and based purely on CCTV evidence that we now know was speeded up, and a version of events provided by Mr B, who wasn't actually there when the theft occurred. I don't think Ageas did enough for it to safely say Mr B provided false information. And as such I don't think it's fair or reasonable for Ageas to use this specific term to exclude the claim.

Policy exclusion

So, let's move on to the second exclusion relating to the keys in the van, and whether it applies. We asked Ageas what it would do if we asked it to reconsider the claim given what I've set out above. Ageas has said it wouldn't cover the loss and it's told us in an email there is an exclusion for "Loss of or damage to the vehicle when no-one is in it unless all the windows, doors and roof openings are closed and locked and the keys removed".

The policy terms and conditions provided has a similar term, albeit worded slightly differently. It says it excludes "the loss of or damage to the vehicle when no-one is in it if any window, door, roof opening, removable roof panel or hood was left open or unlocked; or the keys (or any other device needed to lock the vehicle) are left in or on the vehicle".

The CCTV would indicate that the keys were left in the vehicle. They were either in the ignition or on the driver's seat area. So, as per the policy terms the loss would be excluded when "no-one" is in the vehicle. When we talk about keys in car exclusions this organisation has a very clear approach. And as part of that approach we pay particular attention to whether the driver was in a position to deter the thief or make a theft unlikely to take place.

However, the specific term in this particular policy is stricter. It excludes the loss if “no-one is in” the vehicle. So, in essence it doesn’t matter whether the driver/named driver was in a position to deter. They need to be in the vehicle.

Mr B wasn’t in the vehicle. Nor was he close enough to deter the thief, as he’d gone out of sight to return a bin to a customer. But Mr B’s father was working out of the back of the van. Ageas say “Whilst Mr B’s father is at the rear of the vehicle, it would seem he does not see the thief approach the vehicle as the back doors were open and would have blocked his view – it isn’t until the thief drives away that we see both Mr B and his father chase after the vehicle. There doesn’t seem to be any deter to the theft regardless of how close Mr B or his father were to the vehicle”.

But this isn’t the test. The test is whether Mr B’s father was “in” the van. It’s clear the term is designed to cover the van when it’s left and not in use. But Mr B’s business determines that when he and his father are working, they are effectively using the van. They are in and out, and around the van at all times. All the back and side doors are required to be open to accommodate the use of the power washer. The power washer has pipes and hoses running through each door. Mr B’s father is holding one of these hoses as he operates the washer. And this is evident as the hose spins up in the air as the van is stolen, and you can clearly see Mr B’s father stumble at the back as the van pulls away. He’s clearly very close to the van when it’s stolen and as Ageas has pointed out he’s actually standing between the back doors of the van. At any one-time Mr B’s father could be reaching into the van to work the power washer, or the hoses, or actually using the hoses at the back of the van. This scenario is similar to someone who is loading or unloading at the back of a van. And in this type of situation it would be fair and reasonable to deem the person carrying out the action to be “in” the van. So, I believe in this specific instance, as Mr B’s father is using the van to carry out his work he is effectively “in” it. And therefore, it’s not fair and reasonable to apply this specific exclusion in these specific circumstances.

So, in conclusion, I don’t think Ageas did enough to make a fair and reasonable decision about whether or not Mr B had provided misleading information. It’s clear the video speed was increased. There is a question mark over the assumptions made that were supported by the headlights and Ageas didn’t interview any witnesses. Further to this Mr B wasn’t actually there when the van was stolen. So, it’s not safe for Ageas to say with certainty that Mr B provided misleading information, and as such it’s not fair or reasonable to apply this specific exclusion in this specific instance. Further to this, even though it’s more likely than not that the keys were in the van at the time, I think Mr B’s father, who was working out of the van at the time was in effect deemed to be “in” the van. As such, it’s not fair or reasonable to apply this exclusion in this specific case. And it’s because of this that I’m planning on upholding this complaint. I’m planning on recommending that Ageas settles this claim in line with the remaining terms and conditions of this policy with 8% added. I’m not planning on recommending any compensation.

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 sent my provisional decision on 13 May 2022 as set out above. Mr B didn’t respond. Ageas did respond and it raised a number of issues.

Ageas said the video was not speeded up. It reiterated the point that it believed the keys were in the ignition and were not safeguarded. Ageas said it had contacted the manufacturer with a query about the headlights remaining on after the key was removed and it asked for an extension in order to get a reply.

We responded to Ageas. We advised Ageas that the video was speeded up and we explained the timings of it. We acknowledged Ageas's concern about the keys and advised that we agreed the keys were more likely than not in the van as set out in the provisional decision. We allowed Ageas an extension to contact the manufacturer. That extension has now expired, and Ageas has responded. Ageas has nothing further to add.

So, as there are no further issues raised, I see no reason to depart from my findings as set out above.

My final decision

My final decision is that I uphold this complaint. I require Ageas Insurance Limited to:

- Settle the claim in full as per the remaining policy terms and conditions.
- Add 8% simple interest to the amount paid from date of claim to date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 July 2022.

Derek Dunne
Ombudsman