

The complaint

Mr H and Mrs H have complained that Admiral Insurance (Gibraltar) Limited ('Admiral') have unfairly declined a claim for theft under their home insurance policy.

I will normally only refer to Mr H, as he dealt with the claim and complaint.

What happened

Mr H advertised a computer graphics card for sale on an online marketplace. He agreed that a buyer could come to his home to buy the card. When the buyer arrived, he agreed to buy the card and Mr H put his bank details into the buyer's mobile banking app. The buyer then showed Mr H a screen showing he had transferred the money. However, it didn't arrive in Mr H's bank account. The buyer showed Mr H a webpage that said it could take up to two hours for a transfer to arrive. The buyer said he needed to leave because he had an hour's drive home. He provided Mr H with a screenshot of the payment confirmation and showed an online statement that indicated his balance had reduced by the amount of the transfer. The buyer also said Mr H had his mobile number and could take photos of his car and vehicle registration. The buyer left. When Mr H checked his bank account 30 minutes later the money still hadn't arrived. So, Mr H checked the online marketplace and the buyer had deleted his profile and also deleted the transaction screenshot from a messaging app.

Mr H reported it to the police and then contacted Admiral to make a claim for theft. Admiral replied to say it had updated its records to show an incident had occurred, but no claim had been registered. Mr H then phoned Admiral and was told his claim had been rejected because of an exclusion on the policy.

Mr H complained to Admiral, as he said the initial rejection of his claim was unclear, he thought the claim should be covered and he also said he had been mis-sold the policy. When Admiral replied, it said Mr H should have received a detailed response explaining why his claim had been declined. It offered £25 compensation. However, it said that due to an exclusion in the policy, the theft claim wasn't covered. It also said the policy wording was clear about deception, so the policy wasn't mis-sold.

When Mr H complained to this service, our investigator upheld it. She said the exclusion referred to whether someone was lawfully on the premises. Based on what had happened, she said the buyer wasn't lawfully on the premises. So, she said Admiral should reconsider the claim without applying the exclusion.

As Admiral didn't agree, the complaint was referred to me.

I issued my provisional decision on 5 September 2022. In my provisional decision, I explained the reasons why I was planning to uphold the complaint. I said:

Admiral accepts that it didn't properly explain to Mr H why it had declined the claim. When it replied to the complaint, it explained why it had declined it by saying:

"... the policy booklet advises the exclusion:

- *'Theft and attempted theft*
- *Loss or damage caused by you or your family, domestic staff, lodgers, paying guests, tenants or any other person lawfully in your home, including through a dedicated home-sharing website, unless force and violence was used to enter your home.'*

As you advised that you were a victim of a deception and were scammed, the theft is excluded from your policy as shown above."

The exclusion Admiral referred to was about whether someone was lawfully on the premises. Whether someone is lawfully on the premises can be a relevant factor in a claim that involves deception, but this part of the policy isn't an exclusion for deception, despite Admiral seemingly saying that it is. It is, as the wording of the exclusion said, about whether someone is lawfully on the premises.

When Admiral responded to our investigator's view, the arguments it made were about whether Mr H had taken reasonable steps to prevent deception taking place. In essence, this was that at each step of the transaction, Mr H could have done more to check that the buyer, and the transaction, was genuine. Those reasons aren't about whether someone was lawfully on the premises.

In my view, Admiral hasn't dealt with the claim or the complaint well. Having looked at the circumstances of what happened, I think Admiral incorrectly applied the exclusion for someone being lawfully on the premises, as it wasn't relevant to what happened. As a result, I currently intend to say that Admiral should reconsider the claim without applying the exclusion for when someone is lawfully on the premises. Having done so, if Admiral settles the claim and pays a cash settlement, I also currently intend to say that it must pay interest on that amount because Mr H lost use of that money.

I also currently intend to say that Admiral should pay a total of £200 compensation, which includes the £25 previously offered, because of it how it dealt with the claim. Even when it acknowledged it hadn't properly explained why the claim had been declined, it still didn't appropriately assess the claim. I think this will have added to Mr H's concern about how the claim was dealt with and whether it had been fairly considered.

I asked both parties to send me any more information or evidence they wanted me to look at by 3 October 2022.

Mr H said my provisional decision was the first time he had been made aware that Admiral had questioned whether he had taken reasonable steps to ensure the buyer was genuine. Mr H confirmed again the steps he had taken to check the transfer of funds and again said he had taken a photo of the car registration plate. He said the person had obviously anticipated him taking those reasonable steps and mitigated them in an attempt to deceive. He said this supported that he hadn't been remiss in his responsibilities.

Admiral replied and repeated the points it had previously made about the steps it thought Mr H should have taken, including that Mr H should have checked he had the funds in his account from the purchaser before allowing the person to leave, he could have checked the car registration plate on the government website and he didn't seem to have the buyer's phone number. Admiral disagreed that the claim and the complaint hadn't been handled correctly. Admiral said Mr H should have carried out due diligence. It questioned what would stop someone reporting they had been a victim of fraud or theft and then not providing any proof.

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.

Having done so, I've decided to uphold the complaint and for the reasons given in my provisional decision. I had already considered the points Admiral had previously made, some of which I note appear to be incorrect. For example, from what I could see, Mr H did have the person's phone number and provided this to Admiral when he first opened the claim. Looking at the car details on the government website, these are very brief but appear to match Mr H's description. However, these issues weren't the basis on which I made my decision.

The issue is that the exclusion Admiral applied wasn't relevant to the circumstances of the claim. Admiral has applied an exclusion about whether someone was lawfully on the premises, but the evidence it has relied on to show it was reasonable to apply it are about the steps it says Mr H failed to take to ensure the transaction was genuine. I am not, as Admiral seems to suggest, saying that a policyholder should be able to make a claim for fraud without any supporting evidence. In Mr H's case, it doesn't actually seem to be in dispute that the loss was due to fraud. But Admiral can only fairly apply an exclusion in order to decline a claim where it is relevant to the circumstances. Admiral's response to my provisional decision doesn't persuade me that the exclusion was relevant to the claim or that it was fair to apply it.

Putting things right

Admiral should reconsider the claim subject to the remaining terms and conditions, pay interest on any cash settlement and pay a total of £200 compensation.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that this complaint is upheld. I require Admiral Insurance (Gibraltar) Limited to:

- Reconsider the claim subject to the other terms and conditions in the policy.
- Pay interest on any cash settlement from the date on which the claim was first made to the date on which the payment is made, if it settles the claim.
- Pay Mr H and Mrs H £200 compensation because of how it dealt with the claim, which includes the £25 it previously offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 1 November 2022.

Louise O'Sullivan
Ombudsman