

The complaint

Miss A has complained about her car insurer, U K Insurance Limited (UKI) because it has accused her of fraud, cancelled her policy and declined her claim for theft.

What happened

Miss A was driving her car when it started to lose power and she had to pull over in a busy road tunnel. A passing driver in a recovery truck and the police stopped to help, with the car moved to a safe place where Miss A's roadside recovery provider collected it from – taking it to the road on which Miss A's uncle lives.

Miss A saw the car in the days after it was taken to her uncle's street, accessing it to take items from it. She intended to have the car checked by a mechanic, and her partner began trying to arrange that. On 11 November 2021 Miss A found the car was missing, she checked with a local recovery company but it hadn't been towed. She reported a theft to the police and UKI.

UKI began investigating the claim. It interviewed Miss A and her uncle, but not Miss A's partner. UKI noted that there were some discrepancies in these accounts. UKI had the keys assessed, which Miss A still had possession of. UKI noted that as Miss A had said she had used the key fob to lock the car, the car couldn't have been stolen without the alarm sounding, and the car couldn't have been driven away as it had broken down. It also felt the car couldn't have been subject to a "relay" theft (where thieves use gadgets to intercept and mimic the signals of the car and key), as Miss A had the key with her, it wasn't left with her uncle, near the car's location.

On 2 February 2022 UKI wrote to Miss A. It said that it felt she had knowingly and dishonestly given it false information with a view to making a financial gain. It said it wouldn't deal with the claim further and would be cancelling all Miss A's policies with it. On 28 February 2022, UKI confirmed that the details in the 2 February 2022 letter were its final response on the matter. Subsequently, on 28 March 2022, UKI cancelled Miss A's policy for her stolen car.

Miss A complained to us. And UKI clarified that it had cancelled the policy due to a non-payment of premium of £38.81.

Our Investigator didn't think UKI had done enough to support a finding of fraud. She thought it should continue to consider the claim and pay £150 compensation.

Miss A was satisfied by that outcome. But UKI objected to it.

UKI said that Miss A had not shown how a theft could have occurred. It went over the discrepancies between what Miss A and her uncle had said and indicated it just wasn't happy with the reported circumstances – for example, it felt the car should have been recovered to a garage, not the street of Miss A's uncle. It said the car wasn't driveable and the manufacturer had confirmed that if it had been lifted onto a truck or towed, the alarm

would have gone off. UKI asked for an Ombudsman's consideration and the complaint was passed to me.

I was minded to uphold it – to a greater extent than that expressed by our Investigator, but for similar reasons. In short, I felt, as our Investigator had, that UKI had not done enough to support its finding of fraud. So I issued a provisional decision setting out my views and explaining what I felt was needed to put matters right. My provisional findings were:

“UKI has said that Miss A has not shown how this theft occurred. I think UKI has misunderstood here the extent to which a policyholder has to show they have a claim. They only initially have to show “on the face of it” that a loss covered by the policy has likely occurred. And Miss A did that here or UKI wouldn't have begun investigating it. And UKI did not then decline the claim on the basis that Miss A had not shown she'd had a theft. It chose instead to accuse Miss A of fraud.

UKI knows that when an insurer seeks to rely on an argument of fraud to decline a claim and cancel a policy (I'll come onto cancellation later as I'm aware that technically UKI cancelled for non-payment not fraud), the insurer has to support that with strong evidence. That is because fraud is a serious accusation which can have significant implications for its policyholder. Implications that may impact their wider life and are not just restricted to the cover in question or even just any wider insurance provisions. It is rare that some discrepancies alone will be enough to satisfy this service that a finding of fraud is likely fair and reasonable.

I've looked at the discrepancies UKI has referenced here. I am not persuaded they amount to any more than two people recalling things differently, and where one of those two people clearly has little interest and/or paid little attention to the circumstances which occurred and are being asked about. I say that not least because Miss A's uncle is clearly unaware of simple, often known family details such as Miss A's last name and her marital status. Further, both Miss A and her uncle were interviewed by professional claim investigators who were assessing their behaviour during their interviews, along with their responses to the questions asked of them. The investigators found both Miss A and her uncle to be genuine, and had no concerns that either of them were lying or trying to hide something. But the investigators did note that Miss A's uncle's memory of the incident, particularly in respect of dates, was not clear.

I also think that it was somewhat unfair of UKI to expect Miss A to be able to account for the discrepancies between her and her uncle's account. Looking at one as an example – Miss A said the breakdown, with the car being taken to her uncle's street, occurred on 21 October, whereas her uncle – whose memory as to dates was established as unclear – said it was 8 November. Miss A couldn't reasonably add to that to explain why he gave a different date. But Miss A had confirmed visiting her uncle on 8 November 2021 and was able to show the recovery company had collected her car on 21 October 2021. If UKI had wanted to review the dates and where the car was taken to in more detail, it could have gained authority from Miss A to contact the recovery company. UKI could also have interviewed Miss A's partner. UKI has said it didn't think that would add worth to its enquires. However, both Miss A and her uncle talk of the partner's involvement both in organising repairs and being a go-between, to an extent, for them. Talking to the partner may well have allowed UKI to show whether the 'discrepancies' it had found were likely the result of two different people's memories, or an indication that something more serious, such as fraud, was likely occurring. That would have been a fair and reasonable thing for UKI to do. But UKI chose not to undertake any other interviews, and the only other investigation route it took was to have a specialist assess the keys for the car.

When a car is stolen, insurers will often assess any remaining keys to a car. UKI took that action here. But I think UKI hasn't taken a reasonable view of the results of that assessment. The two main conclusions that UKI has drawn from the report are that the key fobs would have had to have been in close proximity to the car for it to have been subject to a "relay" theft and that with the car being locked the alarm would have sounded if it was broken into or moved. Regarding the first point UKI has said that as Miss A took the keys with her a "relay" theft wouldn't have been possible. And in respect of the second UKI seems to think that an alarm going off would have deterred the thieves and/or that no alarm was heard going off, so the car can't have been stolen in that way.

I note that Miss A did take the car key with her when she left her uncle's address. But in her statement she explains that she placed the key in her bag. Miss A goes on to explain that she visited her uncle's home several times in the days before the car was noticed as missing. So I don't think the fact that Miss A kept the key with her, and that she does not live on the road the car was stolen from, means the car could not have been subject to "relay" theft. Particularly given that it is not known when exactly the car was taken.

The fact of the car alarm likely sounding if the car was broken into or moved does not necessarily mean that the car is unlikely to have been stolen. Given the right circumstances, thieves can overcome alarms and UKI hasn't shown that couldn't have happened here. Further, UKI has said it did not obtain a copy of the police report. And, as I noted, it only interviewed Miss A and her uncle – so it seems it didn't complete any enquiries in the area the car was stolen from. So UKI doesn't actually know whether the alarm did or didn't sound.

UKI has also referred to the fact that thieves are unlikely to have been able to drive the car away as it had broken down. But even if it seems that the car was not lifted or towed away, I don't think driving it was precluded. The report of the breakdown was it had lost power and wasn't safe for Miss A to drive – not that it wouldn't start or function at all.

Overall then, with some discrepancies – which to me don't seem to amount to anything much and which could have been investigated further by UKI – and some potential concerns from UKI about how likely it is that a theft could have occurred, I don't think UKI has done enough to support its finding of fraud. As such I think it acted unfairly and unreasonably by accusing Miss A of fraud, telling her it was cancelling her policy for that reason and declining her claim.

In my findings above I've referenced some enquiries that I think UKI could reasonably have undertaken. I think UKI should reasonably have thought about that before taking the step of accusing Miss A of fraud. It isn't reasonable that it now gets a "second bite at the cherry" so to speak, by undertaking further investigations. So I think UKI must now remove the record of the fraud and settle the claim, with interest being paid on any settlement amount from the date of loss until settlement is made.*

Whilst I don't know why Miss A didn't pay the outstanding £38.81 of her policy premium, UKI had told her it was cancelling her policy. And usually when that happens in respect of fraud, the policy is cancelled to the date of the alleged fraud – in this case that would likely have been the date of the claim. It's unusual for the policy to remain in place and whilst an insurer will usually withhold the premiums paid, they won't usually demand that any remaining premium is met – that is because the effect of the cancellation for fraud is that the policy is rescinded and neither party is obligated to its terms anymore. So I'm really unclear why this cancellation happened in the way that it did here. It looks to me as if the situation wasn't managed properly by UKI. But I'm satisfied that, but for UKI's unfair accusation of fraud, the policy would have been paid. So I think that, fairly, the cancellation must be revoked and the policy reinstated. If the £38.81 is still outstanding, this can be deducted from any claim settlement made.

Because UKI unfairly accused Miss A of fraud she has been without settlement for her car, and without use of a car. I understand that this has been difficult and likely costly for her as she has young children. She also, around the time of the fraud allegation, had a need to attend hospital appointments. I'm satisfied that UKI should compensate Miss A for the loss of use of her car from 28 February 2022. This was the date it confirmed its final response on the claim, and which I have found was unfair and unreasonable. No claim is ever settled straightaway and I think UKI would always have needed to investigate the circumstances here. I'm also mindful that, for a time, Miss A did have the benefit of a courtesy car. So I think requiring UKI to compensate Miss A, at our common rate of £10 per day, from 28 February 2022 until settlement is made, is fair and reasonable in the circumstances here.

I think it has been quite upsetting for Miss A to have been accused of fraud. And I think she has also felt at a loss as to how to resolve things because, as I noted above, she couldn't account for the different version of events given by her uncle. I think £250 compensation is fairly and reasonably due in the circumstances here."

UKI queried my loss of use award. In that respect UKI said I shouldn't be making an award that goes beyond the point of its final response letter dated 28 February 2022. It also said it wanted to be sure that I had understood the concerns it has about how the car could have been stolen. UKI added:

- That the car could not have been stolen by use of a gadget as the key report showed the fob battery was empty and it would have needed power for a gadget to have been used on it/the car.
- In any event, Miss A was not in the area of the car with the key.
- The car was recovered to Miss A's uncle's address because it wouldn't start.
- Its improbable that a thief, who happened to be driving a low loader came upon the car, or tried to start it, found it would not and went back to get a low loader to return in order to complete the theft.
- Miss A should be asked to explain why someone would want to steal a car which would not start.

Miss A said she'd struggled financially following UKI's allegation of fraud and decline of her claim. She said this had resulted in her missing some payments, which has affected her credit file, as has the record of fraud. She asked for the late payments and fraud marker to be removed.

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've reviewed UKI's concerns. But I'm not persuaded they change my view on this complaint.

I note that the key report is dated 5 January 2022, around two months after the theft. So the battery being empty when the key specialist examined it does not mean the fob wasn't working at the time of the theft. And UKI does not know that Miss A was not in the car's vicinity with the key, therefore, preventing the car being stolen by use of a gadget. Miss A had placed the key in her bag and did visit her uncle several times before the car was found to be missing – there's no reason to think the key did not remain in her bag and that she did

not have the bag with her on the occasions she visited her uncle. Although the key expert does also note that if the car had been locked using the key blade alone, the alarm on the car wouldn't have been set to function.

Reviewing Miss A's statement of the circumstances leading up to her car being left at her uncle's address, I think it is by no means clear that the car was not able to function following it being recovered. The car had been losing power when Miss A first pulled over. But she was then able to start it again after a little while of trying. However, she didn't feel safe driving the car and a passing recovery truck took the car to a safer location where Miss A's partner subsequently tried to start the car again. He was unsuccessful at that point – but it isn't clear how long he tried to do that for – and Miss A's recovery agent was already on the way to her at that point and all concerned knew that even if the car was able to start it could only be driven with limited power. I don't think Miss A's account reasonably shows that the car not being able to start was the driving force behind the car being recovered. And as UKI chose not to undertake any other enquiries, such as with the recovery agent or Miss A's partner who seemed to be organising the repair of the car, that detail is all I have to go on. I'm not convinced that the car was not functioning at all when it was left at Miss A's uncle's address.

I'm surprised by some of UKI's responses to my findings. I'd remind it that it accused Miss A of fraud and that for this service to find that it was fair and reasonable for it to do that, it has to have good cause – not just some concerns about how or why a thief might choose to steal a car. And I'm surprised that UKI is querying that a car like Miss A's does not have worth just because it has a fault which may or may not have prevented it starting. But whether or not UKI can see that even a faulty car would have worth to thieves, who could fix it and sell it, or break it for parts, there is no requirement for Miss A to have to justify why her car might be stolen. If UKI had wanted to show that the theft had not taken place – it had the opportunity to do that, but instead it ignored some very key and easy to follow lines of enquiry ultimately accusing Miss A of fraud and declining the claim. I'm satisfied it acted unfairly and unreasonably in that respect.

I realise that my loss of use award extends beyond the point of UKI's final response letter. But I found its decline of the claim on grounds of fraud, and its final response letter which maintained that position, to be unfair and unreasonable. I'm satisfied that Miss A suffered a loss of use of a car as a result of that unfair and unreasonable response to the claim and complaint. So I am awarding a remedy for that.

I appreciate that this has been a difficult time for Miss A. But I can't reasonably hold UKI responsible for payments on other accounts being missed. I don't know they were missed because of financial pressure resulting from the fraud allegation and Miss A was still responsible for managing her finances. In any event UKI is not able to update Miss A's credit file. However, Miss A would be able, following this decision, to add a note to her file explaining, for example, that an insurer unfairly and unreasonably avoided her policy, as verified in a final decision by the Financial Ombudsman Service, which had a short-term effect on her finances. I'd draw Miss A's attention to my section "Putting things right", which also featured in my provisional decision – I have said that UKI should, or now must if Miss A accepts my final decision within the deadline, remove the record of fraud from its own and any industry database.

Having reviewed the response to my provisional decision, my view on the complaint and what is needed to put things right has not changed. My provisional findings, along with what I've said here, are now the findings of this my final decision.

Putting things right

I require UKI to:

- Remove the record of the fraud from its own and any industry database.
- Reinstate the policy, also removing the record of the cancellation from its own and any industry database.
- Settle the claim for Miss A's stolen car, in line with the remaining terms and conditions of the policy, with a deduction of £38.81 (if this sum is still outstanding) being made from any amount due.
- Apply interest* to any claim settlement amount due from the date of loss until settlement is made.
- Pay Miss A £10 a day from 28 February 2022 until settlement is made.
- Pay Miss A £250 compensation.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs requires UKI to take off tax from this interest. If asked, it must give Miss A a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require U K Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 16 February 2023.

Fiona Robinson
Ombudsman