

## **The complaint**

A company I will refer to as E complains about MS Amlin Insurance SE's (Amlin) decision to decline a claim for the theft of a car, under its motor insurance policy.

## **What happened**

In June 2021 one of the cars E had insured with Amlin was stolen from its employee's home address. The theft was reported to the police and a claim was registered with Amlin. The car was recovered around two weeks later but had been stripped for parts and was categorised as a total loss.

Amlin valued the car at £45,595. A higher valuation was confirmed by the lease company at £51,002.33, including optional extras. Amlin revalued the car, including the optional extras it hadn't included first time. Its new valuation came to £50,776.

Amlin asked E if it had a Thatcham approved category 5 or 6 tracking device fitted to the car. This was a requirement of the policy terms for any vehicle with a market value of £50,000 or more. E couldn't confirm a tracking device was in place, so Amlin declined the claim.

E says a tracker was likely to have been in place as otherwise how were the police able to locate the car. Amlin says the police act on various sources of information and that several other cars were found in the same location.

Amlin says a tracker device provides an alert to the owner when the car is stolen, and this can then be actively tracked. It says this information can be shared with the police. This significantly increases the chances of both recovering the vehicle and recovering it without damage. As there was no active tracker system in place Amlin says this has substantially aggravated the cost of this claim, which might have been avoided entirely.

In response to E's comments that the vehicle was likely supplied with a tracking device - Amlin says an annual fee is payable to ensure a tracking device remains operational. It didn't receive evidence to show a tracking device was operational so maintained its decline decision.

E didn't think this was fair and referred the matter to our service. Our investigator didn't uphold its complaint. She says the policy schedule clearly sets out the endorsements that apply. This includes the requirement for an active tracker device. Our investigator didn't think E had shown a device was fitted and active. She thought Amlin had acted fairly when declining this claim.

E disagreed. It says the car was parked at its employees address every night for around four years. It also says Amlin owed a duty of care to send reminders given the importance it placed on the tracker endorsement. E also points out that the car was initially valued at less than £50,000 by Amlin. Because it didn't agree with our investigator's decision, it asked for the complaint to be considered by an ombudsman.

It has been passed to me to decide.

I issued a provisional decision in February 2023 explaining that I was intending to uphold E's. Here's what I said:

*provisional findings*

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I've read E's policy terms to see what endorsements were applied to the policy. At the top of the first page under the heading "Important – you should read this document in full" it says:*

*"This schedule together with your policy wording, any endorsement or certificates and the information set out in the Statement of Facts should be read together as one document."*

*The policy schedule lists five endorsements. Amlin has relied on the following to decline this claim:*

*"Endorsement: FLEET626A – Thatcham approved Category 5 or 6 Tracker condition for vehicles over £50,000: Effective date: 31/03/2021"*

*On page seven of the policy document more detail on the endorsement is provided. It says:*

*"Reference: FLEET626A - Thatcham approved Category 5 or 6 tracker condition for vehicles over £50,000*

*Effective date: 31/03/2021. The following applies to Section 4 – Theft only and is a condition of this policy that you need to meet as your part of this contract.*

*You must ensure that any insured vehicle with a market value of 50,000 GBP or more is fitted with an operational and active Thatcham approved Category 5 or 6 tracking device. If you do not meet this condition, we may reject a claim payment or a claim payment could be reduced."*

*E hasn't provided evidence to show an active tracking device was in place on the vehicle that was stolen. I note Amlin's comments that this model of car can be fitted with one of two trackers by the manufacturer. But it says only one year's subscription is included at purchase. Amlin says subsequent years require an ongoing subscription to ensure the tracker is active.*

*Based on the evidence provided there was no active tracker device on E's car at the time it was stolen. However, the endorsement specifically states that such a device is required for vehicles with a market value of £50,000 or over. I've thought about whether this impacts here.*

*When E's car was recovered it was determined a total loss. In these circumstances the policy provides a settlement payment for the market value of the vehicle. Amlin arranged for a valuation. Its engineer used two of the industry trade guides to establish a market value. Our service also uses these trade guides to consider whether an insurer has been fair when valuing a vehicle. So, I don't think Amlin's approach was unreasonable here.*

*The valuations Amlin's engineer obtained were for £41,580 and £49,610. It took an average of the two and arrived at a market value of £45,595. I can see it used 18,000 miles for E's car when obtaining these valuations.*

*Amlin also asked the leasing company E's vehicle was leased from to provide a valuation. The leasing company valued the car at £51,002.33. This included an adjustment for the optional extras the car came with when new. Amlin's engineer hadn't factored in the optional extras when valuing the car. So, another valuation was performed to include the optional extras. I can see 26,000 miles was used for this valuation.*

*In his second valuation the engineer only used one trade guide. This was the guide that gave the higher valuation initially. The engineer says brake callipers and side steps weren't available to select from the optional extras. But he added an adjustment to include the optional extras amounting to £2,316. This gave an estimated market value of £50,776.*

*Referring to Amlin's claim records, it received an email from the leasing company in February 2022. The leasing company listed the factory fitted optional extra's on E's car. Calculating for 50% depreciation, it arrived at a figure of £2,542.33. The adjustment for the optional extras obtained by both the leasing company and Amlin was fairly similar. I think it's reasonable that Amlin factored this into its valuation and the amount was reasonable.*

*Amlin used two industry guides in its first valuation. But only referred to one of the trade guides for its second. It's not clear why it used a different approach for the second valuation. But if I take Amlin's first valuation for £45,595 and add £2,316 for the optional extras this gives a valuation of £47,911. As this is less than £50,000, it means an active tracker wasn't a requirement of the policy terms.*

*As Amlin's decline decision is centred on the value of E's car, I obtained valuations from three of the industry trade guides to check whether its valuation was fair. I obtained valuations at both 18,000 and 26,000 miles (to reflect the different mileages Amlin used) to see what the difference was. I'll refer to the lower mileage valuations here as this gave the higher market value.*

*Only one of the guides included the optional extras E had on its car. This gave a valuation of £51,926. I added Amlin's adjustment for optional extras to the other two valuations. This gave valuations at £43,730 and £44,566. The average of the three valuations came to £46,741.*

*In these circumstances I think it's fair to take an average of the trade guide valuations when valuing E's car. As Amlin did for its initial valuation. Based on this evidence the car is worth less than £50,000. This means there was no requirement under the policy terms for an active tracker to be fitted to the car. Because of this Amlin can't rely on this endorsement to decline E's claim.*

*In summary, having considered all of this I don't think Amlin treated E fairly when declining its claim for the reason it gave. It should now reconsider the claim based on the remaining terms, without relying on the endorsement for an active tracker. Amlin should pay simple interest at 8% on any settlement payment calculated from the date of the loss until payment is made.*

*I said I was intending to uphold this complaint and Amlin should:*

- reconsider E's claim without reliance on the endorsement for an active tracker and pay simple interest at 8% on any settlement payment calculated from the date of the loss until payment is made.*

*I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.*

E responded to say that it accepted my provisional decision.

Amlin responded to say the vehicle would have been worth over £50,000 at the time of purchase and at the time of the claim. It says although its engineer valued the vehicle originally at £45,345, the lease settlement figure was higher at £51,000. Amlin says on receiving information about the optional extras, its engineer then valued the vehicle at £50,776.

Amlin says in its view the vehicle was always worth more than £50,000. It says that taking into account depreciation it would still be worth over £50,000 at the time of the claim. It says E ought to have known the active tracker system was a requirement of the policy.

### **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 acknowledge Amlin's comments. However, the policy terms are clear. An active tracker is a policy requirement for vehicles worth £50,000 or more. At the time of the claim, the valuations show the vehicle was worth less than this. So, there was no requirement for an active tracker.

The lease settlement figure was above £50,000. But I'm satisfied the approach taken by Amlin to use the industry trade guides to value the vehicle was appropriate. This is in line with what our service expects an insurer to do in these circumstances. By taking an average of the valuations obtained this gives a fair value for the vehicle. This shows it's worth less than £50,000.

Having considered all of this, I'm not persuaded to change my decision.

### **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that MS Amlin Insurance SE should:

- reconsider E's claim without reliance on the endorsement for an active tracker and pay simple interest at 8% on any settlement payment calculated from the date of the loss until payment is made.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 10 April 2023.

Mike Waldron  
**Ombudsman**