

The complaint

G has complained that UK Insurance Limited (UKI) have turned down its claim under a Motor Trade insurance policy. Mr B, who is a director of G, has brought the complaint on behalf of G.

What happened

A person posing as a customer stole a car belonging to G from the forecourt of their premises. G submitted a claim under its policy. UKI rejected the claim on the basis that the car was stolen during an unaccompanied demonstration and the policy doesn't cover theft of motor vehicles arising from an unaccompanied demonstration.

G complained to UKI with the help of its broker about this and the delay in UKI reviewing their decision on the claim. UKI issued a final response letter in which they said they were satisfied the decision to turn down the claim was correct. However, they accepted they'd taken too long to get back to G's broker after they agreed to review the claim. They apologised for this.

G wasn't happy with UKI's response and asked us to consider its complaint about the claim being turned down.

One of our investigators considered the complaint. She issued her view on it, in which she said she thought UKI was wrong to turn down the claim. She reached this conclusion after viewing CCTV evidence provided by G. She recommended UKI settled the claim in accordance with the remaining policy terms and pay interest on the amount due to G.

UKI didn't agree with the investigator's view and asked for an ombudsman's decision. Having reviewed the complaint and viewed the CCTV evidence provided, I asked G to provide the CCTV coverage from the point the thief entered its property. G provided this. I was surprised to find out that UKI had never actually spoken to anyone at G about what happened when the car was stolen. So, having reviewed all the evidence provided by UKI and G, including the new CCTV evidence, I felt it was important to speak with Mr B. So, I spoke to him and two of the people who appear in the CCTV.

Having done so, I issued a provisional decision on 25 January 2023 in which I provisionally decided G's complaint should not be upheld. This was on the basis that it was claiming under the Material Damage section of the policy. And this excluded theft of a vehicle which resulted from an unaccompanied demonstration. I concluded that, although this term wasn't defined in the policy, it should be taken to mean an unaccompanied viewing or test drive. And I went on to explain that I thought G's vehicle had been stolen during an unaccompanied viewing.

I gave both parties until 8 February 2023 to provide further evidence or comments. G provided a report it had obtained from a loss adjuster, I'll refer to as Mr W, as further evidence.

In this Mr W pointed out that the term 'unaccompanied demonstration' also appears on

page 95 of G's policy in the Road Risks section, in an exclusion under the definition of 'Insured Vehicle' as follows:

An insured vehicle does not include a vehicle:

privately owned by any Employee or relative of the Insured or hired to them under a hire purchase agreement, except where the vehicle is in the custody or control of the Insured for sale, repair, testing, servicing, maintenance, cleaning or inspection; or

Whilst out on loan, hire or unaccompanied demonstration (unless otherwise stated)

He also pointed out that on UKI's website there is an optional cover for 'Unaccompanied Demonstrations'. And he provided references and links to other motor trade products or websites for companies offering this cover, which show that you can buy an extension in cover for unaccompanied demonstrations. And that this clearly refers to extending the policy to cover unattended test drives. In view of all this, Mr W said he considered the term 'unaccompanied demonstration' should be taken to mean an unaccompanied test drive and that I was wrong to suggest it should be taken to mean an unaccompanied viewing or test drive.

To further support his view, Mr W provided the dictionary definition of demonstration and pointed out it is 'the act of showing someone how to do something or how something works'. And that a synonym search for demonstration did not bring up the word viewing. And a synonym search for the word viewing did not bring up demonstration.

Mr W also referred to the legal principle of contra proferentem. He thought this meant that – not withstanding there may be a difference of opinion on the meaning of unaccompanied demonstration - it is clear there is doubt about the meaning. And this means it should be construed against UKI, as they drafted the contract it is in.

Finally, Mr W pointed out that the time between the thief sitting in the car and driving off was 34 seconds. And he doesn't think this period of time would constitute him being unaccompanied. And he said if unaccompanied is to be seen as the same as unattended, as suggested by our investigator, then the definition of unattended in the policy should be considered. And it is defined as 'Any Motor Vehicle left without the insured keeping the said vehicle under observation'. He argued that G's vehicle was clearly under observation when it was stolen.

Mr W also explained that he thought the term UKI have relied on to reject G's claim is unusual. And he went on to say it is clear it was not specifically highlighted by UKI, despite it being on page 20 of a 107 page policy document. He referred to UKI's Motor Trade One Product Summary and pointed out that, although it highlights the fact there is an extension for 'Fraud, Trick, False pretence up to £25,000, along with a number of other terms, the term UKI have relied on to reject G's claim is not highlighted.

As well as inviting UKI to provide further comments and evidence in response to my first provisional decision, our investigator also sent them a copy of Mr W's report and invited their comments on this.

They said the term they've relied on is not unusual and is standard in all their policies of this type. And they didn't think they should be required to comment on policies provided by their competitors. They pointed out that like all the exclusions it is noted in the policy wording and G has renewed the policy several times; so had numerous opportunities to review the policy wording and query it. They also think it was for G's broker to highlight any or all of the important policy conditions.

They said they thought Mr W's reference to the fact the term unaccompanied demonstration in both an insurance context and in plain English does not include viewing, but commonly means test drive, is completely inaccurate. So far as they were concerned the act of showing someone how to do something or how something works requires the subject to view the demonstration or object in question. And in the case of the theft of G's vehicle there was a viewing/demonstration of the interior of the vehicle, which includes the infotainment system, dashboard, and vehicle controls.

UKI went on to say if a demonstration is unaccompanied there is more potential for theft. And in this case the thief was given the keys and allowed to sit in the vehicle on his own for the demonstration of its interior. They believe if the salesman had accompanied the thief the theft could have been discouraged or prevented.

UKI also said the term unaccompanied demonstration only appears twice in G's policy. And the second time is – as Mr W has pointed out – in the Road Risks section. And neither of the policy sections in which it appears in any way state that an unaccompanied demonstration solely refers to a test drive. And the Road Risks section does not apply in respect of G's claim.

UKI also said they did not believe there is ambiguity around whether the thief was unaccompanied. Their view is the salesperson was not in the vehicle, so the thief was unaccompanied. In summary, UKI maintained G's vehicle was stolen during an unaccompanied demonstration.

I issued a second provisional decision on 16 February 2023 in which I set out what I'd provisionally decided as follows:

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 now provisionally decided G's complaint should be upheld.

As I mentioned in my previous provisional decision, G's claim is under the Material Damage section of their policy and this carries the following extension in cover, which incorporates the following term which UKI have relied on to reject G's claim:

Theft of Motor Vehicles from the Premises during Business Hours by fraud, trick or pretence not arising from:

a the wilful parting of title for such Motor Vehicle;

b unaccompanied demonstration; or

c theft by the Insured or any director of the Insured or any Partner of the Insured or Employee.'

When I did my previous provisional decision, I hadn't appreciated that it was possible to buy optional cover for unaccompanied demonstrations. And I think it is clear from this cover that many insurers consider this term to refer to unaccompanied test drives. I appreciate what UKI have said they think it means, but this is not really supported by the optional extension for it that is provided by them and other insurers. Also, I don't think the other reference to unaccompanied demonstration in G's policy supports UKI's view that it means an unaccompanied viewing as opposed to an unaccompanied test drive. I say this because the term says:

An insured vehicle does not include a vehicle:

2. Whilst **out on** loan, hire or unaccompanied demonstration (unless otherwise stated) (my emphasis)

The words 'out on' – in my opinion – apply to all three of the things described and I think out on an unaccompanied demonstration implies being out on a test drive, as opposed to being at the insured premises on a viewing.

This means in view of UKI's use of the term unaccompanied demonstration and what other insurers appear to consider it means, I now think it should be taken to mean an unaccompanied test drive.

I think it's clear from the evidence provided that the thief who stole G's car wasn't going on a test drive and he certainly wasn't on one at the point he stole it. So, this is one reason why I now don't think it would produce a fair and reasonable outcome to consider the term unaccompanied demonstration as an unaccompanied viewing or test drive and allow UKI to rely on the abovementioned term to reject G's claim.

The other reason I think the term unaccompanied demonstration should be considered to mean an unaccompanied test drive is that it is – in my opinion - unclear and a reasonable interpretation of it is an unaccompanied test drive. And Mr W is right that in law and as a matter of what's fair and reasonable, the party who didn't draft the contract the term is in should get the benefit of the reasonable interpretation most favourable to them. In this case UKI drafted the contract and they haven't defined the term unaccompanied demonstration. And, as I consider it could be reasonably interpreted to mean unaccompanied test drive, I think this is the meaning that should be used when considering whether the abovementioned term can be applied to defeat G's claim. There are two reasons I think unaccompanied test drive is a reasonable interpretation. One is that other insurers offer cover for unaccompanied demonstrations and it seems this could equally be described as unaccompanied test drives. The second is, the word demonstration is – in my opinion – more synonymous with someone showing someone how the car works whilst it is being driven, as opposed to viewing it with them whilst it is stationary, even allowing for the fact that a viewing might in some small part include showing them how things like the infotainment system works.

As I also think the term unaccompanied demonstration could on a reasonable interpretation be considered as an unaccompanied test drive, it follows that because the thief who stole G's car wasn't on a test drive, it would not produce a fair and reasonable outcome to this complaint if I were to allow UKI to rely on the abovementioned exclusion.

I have noted Mr W's point about the term being unusual and significant. The fact it is in other policies provided by UKI is not – in my opinion – a major consideration in determining whether it is unusual. It's more about whether it appears in policies provided by other insurers across the market. If it is unusual and/or significant, it would mean as a matter of good industry practice it should be highlighted in a product information document provided to G. But UKI are right to say it was also G's broker's responsibility to highlight unusual terms. However, as I now don't consider UKI is entitled to rely on the term to reject G's claim, this issue is not material to the outcome of G's complaint.

I've also noted what Mr W has said about the thief not being unaccompanied. But again, this now has no bearing on the outcome of G's complaint, so I've not considered it further.

In summary, for the reasons set out above, I've now provisionally decided UKI is not entitled to rely on the abovementioned term to reject G's claim. And this means I consider the fair and reasonable outcome to this complaint is for me to require UKI to settle G's claim in accordance with the remaining policy terms. I also consider UKI should pay interest on any amount due to G at 8% per annum simple. This is because G has been without funds it

should have had and needs to be compensated for this. This should be paid from one month after G submitted its claim, as this allows a period for UKI to consider it, to the date of actual payment.

I gave the parties until 2 March 2023 to provide further comments and evidence in response to my second provisional decision.

G has responded to say it accepts it and has no further comments.

UKI have responded to say they do not agree with my second provisional decision. They've said they could understand it better if I was referring to a clause in the Road Risks section of G's policy. And that there is nothing to confirm that a demonstration would be interpreted as a test drive, especially as the term they've relied on is under the Material Damage section of G's policy and covers vehicles while they are on the insured premises. So they think the term demonstration must be showing a client how the vehicle works.

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, it remains my view that the fair and reasonable outcome to this complaint is for it to be upheld.

I appreciate what UKI have said about the fact that the term they've relied on is in the Material Damage section of G's policy. But I still think it could apply to exclude a claim if someone stole a car from the insured premises on the basis they were going to take it out on a test drive. And I note that the Road Risks section does not cover vehicles at all while they are on the insured premises.

For me, the problem is that the term unaccompanied demonstration is not defined and is unclear. And that where it is used elsewhere in the policy and in motor trade policies generally it usually refers to an unaccompanied test drive. In light of UKI's comment about it appearing in the Material Damage section of G's policy, I've thought about what a reasonable policyholder like G, ie a motor trader, with the background knowledge they'd reasonably have available to them would have thought the term unaccompanied demonstration meant if they reviewed the contract, ie the policy wording. And, given that the term is widely used in the industry to refer to an unaccompanied test drive. And that it is possible to buy additional cover for unaccompanied demonstrations that clearly covers unaccompanied test drives, I consider a reasonable policyholder would have thought it referred to an unaccompanied test drive. So, for this and the reasons I set out in my more recent provisional decision, I still think the term is unclear and considering it to refer to an unaccompanied test drive is a reasonable interpretation, which G should get the benefit of.

It therefore follows that I do not consider it would be fair for UKI to rely on the term they've relied on to reject G's claim on the basis that the thief stole the car whilst carrying out an unaccompanied viewing.

Putting things right

For the reasons set out above and in my second provisional decision, I consider the fair and reasonable outcome to G's complaint is for UKI not to be allowed to rely on the abovementioned term in the Material Damage section of G's policy, which refers to an unaccompanied demonstration, to reject G's claim. And for UKI to be required to settle G's claim in accordance with the remaining policy terms.

I also consider UKI should pay interest on any amount due to G at 8% per annum simple. This is because G has been without funds it should have had and needs to be compensated for this. This should be paid from one month after G submitted its claim, as this allows a period for UKI to consider it, to the date of actual payment.

My final decision

For the reasons set out above, my final decision is that I uphold G's complaint about U K Insurance Limited and order them to do what I've set out in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 11 April 2023.

Robert Short
Ombudsman