

## **The complaint**

Mr F complains Aviva Insurance Limited unfairly declined his claim when his car was stolen.

Mr F is represented in this matter by his sister, Miss F. For ease, I'll refer to Mr F throughout this decision. Any reference to Aviva includes its agents.

## **What happened**

On 29 December, Mr F says he bought a new car and gave the seller his own car and £750 in cash for it.

On 30 December 2020, Mr F says his new car was stolen. He reported it to the police and made a claim with Aviva. Aviva discovered the car had been cloned and declined his claim. Cloning is a type of car identity theft when someone takes the registration and other information about a car owned by someone else (the real car), and applies them to another, usually stolen, car.

Mr F complained to Aviva but it didn't uphold his complaint. It said the contract with Mr F to insure the car wasn't valid. This was because Mr F didn't have an insurable interest in the car he'd insured (the real car, which was with a salvage agent in December 2020) because he didn't legally own the real car. So, the car Mr F says he bought wasn't the one Aviva thought it was when it entered the insurance contract.

Mr F came to our service. He said:

- He wasn't to know his car was cloned as he carried out checks before buying it.
- Aviva claimed many things including that he didn't buy the car, he didn't have the key for it and the key didn't belong to the vehicle and he dealt with these issues.
- He can't be expected to know the car was cloned if a large insurer can be fooled into providing cover for it.
- If Aviva hadn't insured him, he would've never bought the car and suffered a loss.

The Investigator didn't recommend the complaint should be upheld. She didn't find Mr F reasonably believed the purchase was legitimate as he hadn't made reasonable enquiries and checks before buying the car.

Mr F didn't agree. He felt he'd carried out all necessary checks to protect himself and made several points including the following.

- He bought his previous car through a private sale so it was something he'd done before. He also took his cousin with him who is fully experienced in private sales and cars in general, especially the technical side. They both made sure the advert was legitimate before travelling to buy it and were fully aware of the risk assessments need to be carried out and ensured they did all of this.
- They had a phone conversation with the seller about how to pay and so, in the messages sent to our service, he was just repeating this to have a written answer.

- The seller came across well-presented and genuine. The information he gave matched the details on the vehicle check. He also asked for the seller's license which he gave 'without hesitation' which assured Mr F he was legit.
- The VIN on the car matched with the number on the V5.

I issued a provisional decision on 26 May 2023 which said the following.

*'I agree with Aviva when it says Mr F doesn't have an insurable interest in the car and this means there's no cover under the policy. However, as the Investigator explained, if the consumer bought the vehicle, with cash, in good faith and there has been an event covered by the policy, we may consider it appropriate to use our fair and reasonable remit to require an insurer to pay the claim.'*

*To consider if the consumer bought the car in good faith, we think about whether they took all reasonable steps beforehand to ensure that it was genuine. This would include things like checking whether the car's purchase price was comparable to that of similar cars, obtaining the car's registration form (V5) and a purchase receipt showing the seller's contact details (even though these might later turn out to be false). We'd also expect the buyer do a check on the car's history.'*

*Mr F says the car was advertised on a social media site for £5,500 over 2 hours away. He shared messages with the seller where he asked, 'would you swap?' and the seller said 'yes'. There was very limited communication about the car he'd be swapping – just photos and mileage. The seller asked, 'what you offering' which Mr F replied to say 'Car + £900'. According to the messages, Mr F travelled to view the car that day. At 20:03 Mr F messages the seller to say he's 10 minutes away and the seller replies with a number. Mr F says he brought the car home with him. At 21:29, there are messages about the finance - Mr F asks if it has been paid off – the seller says 'yes all cleared it's because of the Christmas period'. Mr F replies to say it still shows on the check and so he's reported all his information and the seller to the police so, if after Christmas the finance is still there, the seller 'will deal with the police'.*

*Mr F says, although £900 was agreed in the messages, he actually paid 'around £750' in cash on top of exchanging his car for the new car. I'm not clear why this changed. He says the seller insisted on cash. He didn't get a receipt (as the seller didn't have any paper), evidence the finance had been settled, the car's service history, receipts for the work needed to repair the structural damage referred to in the advert and shown on the vehicle check and only got one car key. Mr F told the insurer he asked for the sellers ID but he didn't have any so his friend showed his, which Mr F took a photo of along with the V5. I note Mr F told our service this was the sellers ID. The V5 didn't match the details on the ID nor the sellers details or where they met. Mr F says the seller told him this was to avoid there being too many previous owners recorded on the car's history.'*

*Mr F says, before he bought the car, he did an online car history check which didn't suggest any problems apart from the outstanding finance and Category S status. He showed us a copy of that result and evidence it was obtained on 29 December. In the insurer's investigations, it says he completed this at 21:09. A full copy of this report hasn't been sent to our service by Mr F but, due to the outstanding finance and Category S status, this will have said at the top wording along the lines of 'Warning – There is serious adverse data about this vehicle'. It will also have stated 'Do not purchase this vehicle until you have confirmed the correct VIN' with the opportunity for Mr F to enter it for checking.'*

*I note Mr F says he and his family member both made sure the advert was legitimate before travelling to buy it. But I haven't seen any evidence that checks were carried out before they made the drive to the sellers location, more than 2 hours away from where they lived.'*

*Whilst Mr F also says he did the online check before he bought the car, this doesn't seem consistent with the evidence presented to our service. I can see he messaged the seller around 75 minutes after arriving at the address given to him and 20 minutes after the vehicle check was bought to ask him about the outstanding finance and also tell him he'd phoned the police about it. So, I don't find it likely he did this while he was with the seller or before meeting him. Instead, I think Mr F carried out or at least reviewed the vehicle check after buying it. Even if he'd done it before, the result would've been the same with a clear warning about proceeding due to the damage and finance and a direction to fill the vehicle identification number (VIN) details into the vehicle check.*

*I haven't seen any evidence Mr F took the checking company's recommendation and entered the VIN before buying the car. The problem with failing to do this and only providing the registration number is that this was cloned from the real car. So, if the VIN as well as the registration number had been checked, that may have flagged up other issues. And, if the VIN doesn't match the registration number on the vehicle check, that may indicate cloning. Mr F says he checked the VIN on the car and it matched the V5. But that's not the issue. What's relevant is whether Mr F checked, before buying the car, that the VIN on the car matched the other information held about the vehicle independently. Although it may have matched the V5 document – which was presumably a forgery - it doesn't mean the VIN on the cloned car matched the VIN on the real car. I think given all the other issues which should have given Mr F cause for concern and the warnings on the vehicle check report, it was a reasonable precaution for him to take in this case.*

*There are other reasons which should've alerted Mr F to make further checks on the car and exercise considerable caution. And I thought about what Mr F has said - he and a family member who went with him had experience of buying cars in this way and knew what to look out for. I've also thought about the numerous inconsistencies in the evidence with our service when comparing what Mr F has told our service, the insurer and the investigator.*

*By way of example, the price of the car should've caused Mr F concern. The value given to the new car by the salvage agents - even with the damage to it - was around £10,800 but it was advertised for £5,500 with the damage having been repaired. This is much less than its market value and I haven't seen any evidence to justify such a large discount. Further, Mr F paid around £750 for the car as well as handing over his own car. I checked the motor trade guides we use to determine the market value of vehicles and the car Mr F swapped for the new car had a market value at the time of around £6,950. This means he was paying an equivalent of around £7,700 for a car worth more than £10,800 damaged but advertised for £5,500 repaired.*

*Given all the factors I've mentioned above, I can't say Mr F carried out all reasonable steps to ensure the new car was genuine. Further, from the searches and information he did have, there was sufficient evidence to raise serious suspicions about the genuineness of the car. So, I don't agree it's reasonable to say he bought the new car in good faith.*

*Taking all the above things into account, it wasn't unreasonable of Aviva to reject Mr F's claim on the basis he didn't have an insurable interest. Further, I don't agree I can say it's more likely Mr F took reasonable care or acted in a way such that Aviva should pay his claim. Nor would it be fair and reasonable for me to do require it to do so.*

*I know Mr F feels Aviva is responsible as it insured a cloned car but there's no obligation on an insurer to do that, as it's the consumer's responsibility to take reasonable care. And, for the reasons set out above, I don't agree this is what happened here.'*

*Aviva didn't respond. Mr F asked for more time to respond which was agreed by the*

Investigator but ultimately nothing further has been sent to our service.

### **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 reconsidered everything and with no new information from either party in response to my provisional findings, I see no reason to depart from them.

Given all the factors set out in the provisional decision and above, it wasn't unreasonable of Aviva to reject Mr F's claim on the basis he didn't have an insurable interest. Further, I don't agree I can say it's more likely Mr F took reasonable care or acted in a way such that Aviva should pay his claim. Nor would it be fair and reasonable for me to do require it to do so.

I know Mr F will be disappointed with this outcome. But my decision ends what we – in trying to resolve his dispute with Aviva – can do for him.

### **My final decision**

My final decision is that I don't uphold Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 2 August 2023.

Rebecca Ellis  
**Ombudsman**