

The complaint

Mr S has complained about his car insurer Admiral Insurance (Gibraltar) Limited because it has accused him of fraud; declining a claim he made when his car was stolen.

What happened

Mr S parked his car at work, locked and left it. When he returned on the evening, the car had gone. Mr S found CCTV footage of a person standing by the car, unlocking it, getting in and driving away. He called the police and made a claim to Admiral. Admiral applied for a copy of the police report, reviewed the CCTV footage, interviewed Mr S and assessed the two car keys he had provided. Admiral noted the keys were both damaged internally (by different means). It felt Mr S had likely done this so the data stored on the keys could not be read. It declined the claim and said it would cancel Mr S's policy. It referred to the fraud clause on the policy and said it wanted Mr S to repay it £502.14 (its cost for the key report). In May 2022 it recorded a fraud marker against Mr S's name. The policy was not cancelled – it continued until the end of its term in September 2022 and was not renewed by Mr S.

Mr S complained to the Financial Ombudsman Service. In a final response letter dated 8 September 2022 Admiral said it was satisfied it had made a fair and reasonable decision. It felt the reported location of Mr S's car key, at the time of the theft, meant it was unlikely a thief could have used a device to steal the car (referred to as relay theft). It said it believed the keys had been tampered with to conceal the data they held. It wasn't minded to change its view on the claim outcome.

Our Investigator wasn't convinced the possibility of the use of a device by the thief could be ruled out. But, on balance, he felt Admiral's decision to not cover the claim was fair because the damage to the keys had prevented it from validating the loss.

Mr S was unhappy. He noted that whilst the car, at the time of the theft, was some distance from the keys it was possible, when standing outside of the building, to be within a few feet of where his keys had been within the office, whilst also not being too far from the car's location. So he felt it would've been possible for the car to have been stolen by a thief using a device. His complaint was passed to me for an Ombudsman's consideration.

I asked Admiral if it had any evidence regarding its view that relay theft was unlikely to have occurred. It said "the CCTV is not indicative of a relay theft". I reviewed everything and felt the complaint should be upheld. So I issued a provisional decision, my findings were:

"Fraud is a serious issue with significant consequences for a policyholder accused of it by an insurer. As such this service expects an insurer, wanting to rely on an accusation of fraud, to support such in strong evidence. Each complaint about a fraud allegation is taken on its own merits but, in general terms, it's unlikely that merely a belief or opinion from an insurer's claim or complaint handler will satisfy that a fair and reasonable allegation of fraud has been made. That is not least because there are two parts to 'fraud'. The first is not being truthful. With the second being that the untruthfulness was put forward by the policyholder with a view to gaining a benefit from the policy they weren't otherwise entitled to receive.

Here there is damage internally to the keys Mr S presented to Admiral. I understand that Admiral believes Mr S tampered with them to conceal data. But it has presented absolutely no evidence in support of that contention. It hasn't presented any evidence which shows when they were tampered with. And the key report points to them likely being the keys for this car. Further CCTV footage shows Mr S arriving in the car on the morning of the theft, getting out of the car and locking it.

Which brings me on to the second part of the fraud test. Even if Admiral could persuade me in response to this provisional decision that Mr S tampered with the keys before sending them to it, Admiral would have to show he did that to gain something he wasn't entitled to under the policy. From the thrust of Admiral's letters (believing Mr S was actively concealing data on the keys), it would seem it thinks the 'benefit' would be that a key was used by the thieves, or maybe the car was left unlocked, with the policy not covering theft in those circumstances. But the CCTV footage does not, in my view, support either of those concerns. Admiral, as I said above, has seen Mr S drive the car on the morning of the theft, and lock it. The footage of the theft does not suggest the thief had a key to enter the vehicle as the thief stands at the car door for a number of seconds seemingly doing something with their hands. Lights flash on the vehicle, indicating it had indeed been locked, and the thief gets inside. There is then a relatively long pause before the thief drives away. I'm satisfied that had the thief been using a key they'd have made off much quicker.

Admiral has said it doesn't think the car could have been taken by relay theft. But I'm not satisfied it has either fully considered the layout of the premises in concluding that, or sought expert opinion. In any event neither Mr S nor Admiral have to show how the car was stolen. All of import here is whether Admiral has shown it's most likely a fraud has occurred. I don't think it has done that. So it's going to have to remove its record of fraud.

Admiral has accused Mr S of fraud, but whilst making those enquiries it had the chance to consider its liability position more widely. Its hasn't flagged any other bars to liability and, by implication if nothing else, its fraud enquiry demonstrates it must have or should have also considered the theft in light of policy terms. Because, as I've explained, fraud involves an attempt to gain something one is not entitled to under the policy. So I'm going to require Admiral to settle Mr S's claim for his stolen car in line with the remaining terms and conditions of the policy i.e. those related to settlement.

Whilst Admiral threatened to cancel Mr S's cover, it didn't action that. Rather Admiral has said that the policy continued to renewal and lapsed, so Mr S won't have to declare a policy cancellation by it in the future. Of course, if Mr S has a different understanding of his policy, he should let me know in response to this provisional decision.

I understand that Admiral accusing Mr S of fraud has been very upsetting for him. Not least as it has prevented him from obtaining a mortgage. Had Mr S obtained the mortgage, there is still no guarantee he would have been successful in purchasing the property. But Admiral's fraud marker has undoubtedly made the process or prospect of Mr S being able to try and find a new home much more difficult. I understand he has also been without use of a car on and off, with sporadic use of company cars and those loaned by family members. Also that he's been unable to arrange a more permanent alternative due to cost of insurance with the fraud marker against him, as well as still having to pay the finance for his stolen car. Taking everything into account, particularly bearing in mind that he's sometimes been without use of a car, I think £2,000 compensation is fairly and reasonably due."

Mr S said he was happy with the outcome. Admiral said its expert had confirmed that the keys had been damaged and it had removed the fraud markers previously. Our Investigator asked Admiral for proof of it having removed the fraud markers. Nothing was provided.

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 acknowledged in my provisional findings that the keys were damaged internally. The rest of my provisional findings explains why that alone, in these specific circumstances, does not show that Admiral made a fair and reasonable finding of fraud against Mr S.

I note that Admiral has said it has already removed the fraud markers. But also that it hasn't provided any proof of that. Admiral will be aware that, in this respect and others, if it wants to rely on something it has to be able to evidence or share that data, at least with this service. Here, Admiral hasn't presented any evidence to give me cause to change my provisional view of this complaint. Specifically in respect of it presenting nothing regarding the fraud markers, my compensation award and the directional award regarding it removing those records, will remain.

I've considered the responses, I've not been persuaded to change or amend my provisional findings. They, along with my comments here, are now the findings of this, my final decision.

Putting things right

I require Admiral to:

- Remove the record of fraud from its own and any industry database.
- Settle the claim for theft in line with the remaining policy terms.
- To any settlement, add interest* applied from the date of loss until settlement is made.
- Pay Mr S £2,000 compensation for distress and inconvenience.

*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 may require Admiral to take off tax from this interest. If asked, it must give Mr S a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Admiral Insurance (Gibraltar) 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 Mr S to accept or reject my decision before 25 August 2023.

Fiona Robinson

Ombudsman