

The complaint

Ms O complains that Admiral Insurance (Gibraltar) Limited should meet her claim on a motor insurance policy.

What happened

The subject matter of the claim and the complaint is a sports utility vehicle, first registered in 2009. One of its features was keyless entry.

In early September 2018, the car passed an MOT test with a recorded mileage of about 79,000.

In early September 2019, the car passed an MOT test with a recorded mileage of about 90,000.

In early September 2020, the car passed an MOT test with a recorded mileage of about 99,000.

For the year from early August 2021, Ms O took out a policy with Admiral. She was the policyholder. The policy also covered a male named driver. Any claim for theft would be subject to an excess of £350.00.

By late August 2021, the car passed an MOT test with a recorded mileage of about 105,000.

In June 2022, Ms O reported that someone had stolen the car. She sent Admiral relevant documents and a key.

By late June 2022, Ms O had complained to Admiral that it wasn't treating her fairly.

Admiral appointed an investigator to interview Ms O. Admiral told Ms O that a key expert had said the key hadn't been used since February 2019.

By about 21 July 2022, the car had been found. Admiral arranged for an engineer to inspect it at a repairer. The car had a smashed driver's side window. It had a recorded mileage of about 114,000.

On about 7 September 2022, Admiral told Ms O that the car was a total loss.

On 8 September 2022, Admiral wrote to Ms O declining to meet her claim. Ms O complained to Admiral about that.

On 9 September 2022, Admiral sent an email to Ms O saying that the car was in a free place of storage whilst the ECU (electronic control unit) reading was being completed.

By a final response dated late November 2022, Admiral turned down the complaint, but said it was sending Ms O £25.00 as an apology for delay in responding to her complaint. Ms O asked us to investigate.

our investigator's opinion

Our investigator didn't recommend that the complaint should be upheld. She thought that Admiral reasonably declined the claim in line with the policy terms.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Ms O and to Admiral on 24 July 2023. I summarise my findings:

I wasn't satisfied that Admiral properly investigated the key or the ECU. I was minded to find that Admiral treated Ms O unfairly by suggesting that she had deliberately misled it about the circumstances of the theft.

Subject to any further information from Ms O or from Admiral, my provisional decision was that I upheld this complaint in part. I intended to direct Admiral Insurance (Gibraltar) Limited to pay Ms O:

1. the pre-theft market value of the car, less the excess of £350.00; and
2. simple interest on that balance at a yearly rate of 8% from the date of the claim to the date of its payment. If Admiral considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Ms O how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate; and
3. £500.00 for distress and inconvenience.

Ms O accepted the provisional decision. However, she asks the following:

- Can we confirm with Admiral that her name has not been applied to the fraud register?
- She has not held a car insurance policy for more than a year. She thinks she lost her no-claims discount ("NCD") after six months. Do we know how this will be rectified?

Admiral disagreed with the provisional decision. It says, in summary, that:

- The incident could not have occurred as reported by the insured. This can clearly be seen via the data retrieved from the vehicle key. The time and date could be incorrect on the vehicle. However, the mileage will always update when the vehicle key is used in the car. This key has not been used since 2019 based on the mileage being at 82,498 miles. The vehicle MOT history supports this.
- There is only one key coded to the vehicle. The key the insured supplied was sent to the Approved Repairer to complete an ECU reading, this starts the car. Therefore, the key supplied must be the only key coded to the car. Had the thief coded a new key to the vehicle then the system would have been wiped and the insured's key would not have been programmed to the vehicle, resulting in this key not working/start the engine.
- It also has concerns with this incident being staged as the insured was in possession of the only coded key to this vehicle and this must have been used to move the car.

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.

Like most motor insurance policies, Admiral's policy excluded claims for theft of the insured car while it was unattended with a key in it. So Admiral asked Ms O about the keys to her car. She said that she had lost one key, and still had the only key she had been using.

But Admiral asked locksmiths to investigate the key Ms O still had. They said that someone had last used the key in early February 2019, when the recorded mileage was about 82,500. This suggests that since early February 2019, Ms O had been driving the car – increasing the recorded mileage to about 114,000 - using another key that she no longer had after the theft.

In many cases, I would say that such evidence about the key was enough to make it fair for the insurer to decline a theft claim.

However, Ms O's case is unusual in that the car was recovered and so it was available for analysis.

We put Ms O's points to Admiral. Admiral sent us an email and a screenshot from the car's ECU dating from mid-September 2022. The email said that there was one key stored in the system.

I find that inconsistent with there having been two keys for the car at the time of its theft. When we put that to Admiral it repeated the evidence from the locksmith.

So I'm not satisfied that Admiral properly investigated the key or the ECU. I find that Admiral treated Ms O unfairly by suggesting that she had deliberately misled it about the circumstances of the theft. That was hurtful to Ms O, with jeopardy for her ability to pass vetting procedures for her work.

Responses to the provisional decision

Admiral says that Ms O had the only key coded to the vehicle. Admiral says that the key hadn't been used since the mileage was 82,498 which was in 2019. Yet Ms O drove the car until June 2022 when the recorded mileage was 114,000. And Admiral also says that Ms O used that key to move the car and stage the theft.

I consider that this is logically inconsistent. I prefer Ms O's evidence that someone stole the car without the only key which she still had.

The August 2021 policy schedule said that Ms O had fifteen years NCD and that it was "protected", but Admiral's maximum NCD was five years. As the NCD was protected, I wouldn't expect it to be lost through one claim in a policy year.

I accept that an indirect consequence of Admiral's unfair refusal of Ms O's claim has been that she hasn't been able to afford to acquire a replacement vehicle or to take out a motor insurance policy for the last year or so.

I expect Admiral to provide Ms O with proof of her NCD as at August 2022. However, I don't find it fair and reasonable to direct Admiral - and I don't have any power to direct other insurers – to accept that NCD in relation to any new policy from now (August 2023) onwards.

When Ms O confirms her acceptance of this final decision, Admiral will be bound to accept the decision and pay her claim. I don't expect Admiral to disclose whether it has made a record on any anti-fraud database. But if it has, I expect Admiral to correct that when it pays the claim.

Putting things right

I will direct Admiral to pay Ms O the pre-theft market value of the car, less the excess of £350.00. As I consider that Admiral should've paid the claim sooner, it should add interest at our usual rate from the date of the claim.

Keeping in mind the impact that Admiral's refusal of the claim has caused for over a year, I find it fair and reasonable to direct Admiral to pay Ms O £500.00 for distress and inconvenience.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint. I direct Admiral Insurance (Gibraltar) Limited to pay Ms O:

1. the pre-theft market value of the car, less the excess of £350.00; and
2. simple interest on that balance at a yearly rate of 8% from the date of the claim to the date of its payment. If Admiral considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Ms O how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate; and
3. £500.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 30 August 2023.

Christopher Gilbert

Ombudsman