

The complaint

Mr A complains that Wakam declined a claim made on his commercial motor insurance policy after his car was stolen.

What happened

Mr A advertised his car for sale and prospective buyers came to view it. But unbeknown to Mr A, the thieves swapped one of the car's keys and were able to steal the car. Wakam said theft by deception was excluded from cover under the policy's terms and conditions. So it declined to pay the claim. Mr A thought this was unfair.

Our Investigator recommended that the complaint should be upheld. He thought the policy exclusion was clear. But he thought it was unfair for Wakam to rely on it to decline the claim as he thought Mr A had done all he could to prevent the theft. So he thought Wakam should consider the claim under the remaining terms and conditions of the policy.

Wakam replied asking for an Ombudsman's review, so the complaint has come to me for a final decision. Wakam cited a similar complaint that had not been upheld by 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.

Mr A described the circumstances of the theft. Three potential buyers came to his house to view his car. Mr A said CCTV was in operation and he didn't let the buyers out of his sight. But he did let the buyers use the car's key to start it. Wakam thought the buyer must have then swapped the key for one coded to a different car. Later that evening, the CCTV showed men walk up to the car and open it and drive away, most likely using the stolen key. I can see that Mr A's car was later recovered by the police, albeit damaged.

Our approach in cases like this is to consider whether the insurer's acted in line with the terms and conditions of the policy and fairly and reasonably.

Wakam relied on an exclusion from cover to decline the claim. On page 10 of the policy booklet under "*Fire and Theft: What is not covered*" it states.

"We will not be liable for... loss of your vehicle where possession is obtained by misrepresentation or deception."

I think this is a common exclusion in motor insurance policies, and I don't find it unusual or unreasonable. It is significant, but I think it's clearly enough set out in the policy wording for Wakam to reasonably rely on it.

But we think the intention of terms such as this is to exclude claims where the policyholder hasn't taken reasonable steps to protect the vehicle from theft. So I've thought about whether Mr A took reasonable care of his car when he invited the potential buyers to view it.

I can see that Mr A advertised his car on a reputable site and retained the mobile phone number of the potential buyers. He was later warned, too late, that the number belonged to someone not trustworthy.

Mr A was attended by his brother and the viewing was recorded by CCTV as he said he wanted to make sure they were kept safe. From his account, during the viewing Mr A kept close to the potential buyers and they were always within his sight.

Mr A didn't allow the buyers to sit in his car or to drive it. He handed over the spare key so that the buyer could check that it worked to start the car by leaning inside a window. So the key was out of Mr A's hands for four or five seconds.

The buyer then returned the key to Mr A, and he later returned it to its storage place. Mr A had earlier started the car using his main key. So I don't think it was unreasonable for him to expect that the buyer would want to check that both keys worked.

I'm satisfied that Mr A had done all he could reasonably be expected to do in the circumstances to keep his car safe. He hadn't handed over control of the car, and it was reasonable that he hadn't anticipated the thief swapping the key by sleight of hand. And so I think it was unfair and unreasonable for Wakam to decline his claim because of the exclusion. And I think it should now reconsider his claim under the remaining terms and conditions of his policy.

Wakam cited a similar complaint which this service didn't uphold. But I think there are differences in the circumstances. And we decide each complaint on its individual merits. So I'm not satisfied that the non-uphold decision on this other case is a sufficient reason to not uphold Mr A's complaint.

Putting things right

I require Wakam to reconsider Mr A's claim under the remaining terms and conditions of his policy.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require Wakam to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 26 September 2023.

Phillip Berechree
Ombudsman