

The complaint

Mr K has complained about his car insurer U K Insurance Limited (UKI) because it has accused him of fraud and declined the theft claim it had previously settled in full.

Mr K has been known by another name, but Mr K is the name relevant to this complaint about his cover with UKI. There was a bankruptcy order in Mr K's former name, but that has since been annulled.

What happened

Mr K's car was stolen in March 2022, UKI accepted the claim and moved to settlement for it within about a month. UKI settled the finance agreement for the car and sent Mr K a cheque for the remaining part of the market value sum it had determined for the car. Due to a recent change of name, Mr K asked UKI to reissue the cheque to him. UKI agreed but then became aware of and started to look into a recent bankruptcy, which then caused it to review the claim as a whole.

In July 2022 UKI said it thought Mr K had acted fraudulently and that it may cancel any policies Mr K held within its group of businesses. Further, even if it could be persuaded there had not been any fraud, it could no longer accept the claim. It said it would look to Mr K to repay it the sum paid to the finance company, and wouldn't reissue the cheque. Mr K complained to the Financial Ombudsman Service but also communicated further with UKI. UKI considered some further evidence presented by Mr K. But said it didn't change its position as set out in its July 2022 letters, which included its final response letter.

When our Investigator at the time wasn't minded to uphold Mr W's complaint, he wasn't happy so his complaint came to me for an Ombudsman's decision. I was minded to uphold it. I wasn't persuaded that UKI's allegation of fraud was fair or reasonable. Nor did I think it could fairly decline the claim. I issued a provisional decision. My provisional findings were:

"Fraud"

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 showing a number of 'discrepancies' or setting out a list of 'concerns' 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.

UKI set out eight reasons for concern when alleging fraud. In summary they are:

- 1) Mr K had given different timings for the likely occurrence of the theft.*
- 2) Mr K said he had two keys for the car, but later only one.*
- 3) Mr K confirmed there was CCTV footage before calling the police.*
- 4) The police report says Mr K was reluctant to speak to them.*
- 5) CCTV shows that the thieves did not unlock or force entry to the car.*

- 6) The owner of the carpark where the car was parked doesn't remember seeing Mr K there other than the day of the theft, when he'd said he always parks there.
- 7) The one key Mr K gave to it is the spare key.
- 8) The bankruptcy had occurred shortly after the policy was arranged and shortly before the theft occurred.

I'm not persuaded that points, 1), 3), 4), 6) and 8) amount to anything more than discrepancies and concerns, certainly nothing strong enough for fraud. I'll say no more about them. Rather my findings will focus on points 2), 5) and 7).

Points 2), 5) and 7) require further comment. Not least because the new evidence Mr K presented to UKI was a second key. It was UKI's investigators that he spoke with and sent the key to. He told them that he had always had both keys – but when UKI had begun reinvestigating the claim, and because it had already settled the claim, he just sent it one key, he thought that was easier. Clearly Mr K shouldn't have done that – he was bound to be open and transparent with UKI. And I can understand that UKI would have had some worries about this change. I note the investigators recorded on their file that this raised more questions for them. But, other than having an expert review the newly presented key, UKI chose not to undertake any other enquiries, instead referring Mr K to its previous reasons for alleging fraud and confirming that its (previous) final response letter allowed him to complain to us. So I'm reviewing point 2), 5) and 7), summarised above, of UKI's fraud concerns, in light of the fact that Mr K has presented to it a second key.

The report on the second key confirmed it was a match for the 'spare' key examined before. That they were both for Mr K's stolen car. That the key now being examined was the 'main' key for the car. So Mr K had told UKI he had two keys for the car and, following the theft, he still had those two keys in his possession. The key report also confirmed that the keys for Mr K's make and model of car do not hold any data in them from the car, such as the date or mileage point they were last used to drive the car.

So I return to the three points about the key in respect of whether they amount to strong evidence of fraud.

Point 2) and 7) go hand-in-hand in my view and do not amount to strong evidence of fraud. Mr K did change from saying he had two keys to one, and he did send UKI the spare key. But he didn't lie about having two keys and he has explained why he later told UKI there was only one. And the key report shows he did have a main key. UKI then chose not to challenge, investigate or consider that further. So these two points become no more than discrepancies or concerns – they aren't strong evidence of fraud.

Point 5) is potentially the strongest evidence UKI has presented. I've seen the CCTV footage. It starts just moments before the car is taken. The thieves walk up to the car, open the door, get in and drive away. The key report explains that the key can't be cloned and that codes from it can't be 'grabbed'. The report says the car is of a type vulnerable to relay theft – where thieves use a device to enhance the range of the actual key, making the car think the key is near, so it unlocks. But in the circumstance here, Mr K said he had the key with him too far away from the car to make relay possible. So it seems the car had to have been unlocked. Which is suggested by the CCTV footage. Mr K had told UKI he remembers locking the car. Given the persuasive evidence of the key report and CCTV, it seems Mr K must have been mistaken in this respect. But his being mistaken doesn't mean he lied – that he knew he had left the car unlocked but told UKI differently. And UKI hasn't presented anything which makes me think it is most likely that Mr K lied to it about this. So the first part of the fraud test has not been met in this respect.

It is my view that UKI has not shown that it made a fair and reasonable finding of fraud against Mr K. As such it will have to amend all databases to remove the finding, it can't rely on the finding to decline the claim and if any policies were cancelled, they'll need reinstating.

Decline of the claim

UKI, when alleging fraud, said it was reserving its right, in case the finding of fraud was set-aside, to decline the claim based on the policy terms for theft. I understand why UKI thinks the claim fails based on the policy terms. It seems as though Mr K must have left the car unlocked (albeit unknowingly) and the policy excludes theft in that circumstance. However, UKI, when initially assessing this claim, had an opportunity, had it wished to, to consider if any exclusions to the cover applied which might have limited or removed its liability for the loss. UKI could then, had it wanted to, have obtained the CCTV footage and/or sought expert advice on the vehicle keys. But, for whatever reason, it chose not to and to instead fully accept the claim making settlement to both Mr K and the finance company, totalling the full market value for the car. I don't think it's reasonable for UKI to have a second chance at that.

Let me be clear, I am in no way saying that UKI, having noted some concerns following its settlement, should not have made, or wasn't entitled to make, enquiries regarding fraud. And I can understand why, the possibility of fraud having become an issue, UKI wasn't inclined to reissue the settlement cheque to Mr K. If UKI had found evidence which showed a fraud had most likely occurred, that would reasonably have overturned its previous claim settlement. But, fraud aside, it can't reasonably review the claim again – not based on policy terms and evidence it had the opportunity to consider (but chose not to) before accepting and settling the claim in full.

Which means UKI will have to amend any records to show the claim is accepted, cease chasing Mr K for recovery of the finance costs, and reissue payment to him for his part of the remaining settlement, £16,521.62. And that sum will have to have interest added to it from 3 August 2022. This being the date the report on the second/main key was assessed by UKI and it chose not to make any further enquiries, or review its initial findings regarding fraud.*

Compensation

UKI has, unfairly and unreasonably in my view, accused Mr K of fraud and withheld a claim payment from him for over a year. It also sought to recover from him the not insubstantial payment it had made to the finance company (around £16,000). I've no doubt that was distressing and worrying for Mr K. And I understand that as of May last year Mr K, without funds from UKI, had been unable to replace his car. But he did have use of his partner's van. I accept though that using a vehicle which is not yours, not like yours and likely at times is required for use by others, is not without inconvenience. Overall I think UKI should pay Mr K £750 compensation to fairly and reasonably make up for the distress and inconvenience its unfair and unreasonable actions have caused."

Mr K said he'd like more focus on UKI's accusation that he hadn't cooperated with the police – he feels victimised by UKI. He said he had missed work and has extra costs through not having a car since March 2022, had continued to have to pay for insurance and, due to his religious beliefs, the accusation of fraud had been particularly hurtful. Our Investigator asked Mr K if he had any evidence of having lost work. Mr K wasn't able to provide anything. He said he'd like the complaint separating though – so that his inconvenience could be considered separately to the claim outcome. He said the loss of the car, along with the sentimental items in it, has devastated him. He said that, overall, the compensation of £750 wasn't enough.

UKI said, regarding the claim, that it had made the payment to the finance company in good faith only. It had then investigated matters and its key report showed the car could not have been taken without the key. It feels Mr K must have said the things he did to mislead it. Although it also accepted that “our discrepancies listed within our first letter of repudiation fell short of meeting the burden of proven fraud”. So it said it had revisited everything and was now presenting a new rationale to show Mr K had acted fraudulently. It set out its new arguments, along with supporting evidence, and requested that my provisional decision was reviewed in light of all that, which it felt showed a decision of fraud was fair and reasonable.

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 appreciate that Mr K may want to know more about UKI’s comment that he hadn’t cooperated with the police. But it’s not something, as explained provisionally, that I felt the need to dwell on as part of this complaint.

I note Mr K, in response to my provisional findings, said he’d had financial losses due to UKI accusing him of fraud and cancelling his policy – although he hasn’t been able to evidence them at this time. But he didn’t say that when making his complaint. And I haven’t seen he ever told UKI he would be unable to work. I also note he previously told UKI, that, since UKI had accused him of fraud, he had been using his partner’s van. I do appreciate, as I said provisionally, that being without a car will cause some difficulty – but I’m not persuaded that Mr K was unable to work only because UKI didn’t pay him the remainder of the funds for his car. In saying that I particularly note that UKI had paid off the finance agreement. Taking everything into account I’m not persuaded to award Mr K anything for financial loss, or to change my view on the fair and reasonable compensation. I remain of my view as stated provisionally that fair and reasonable compensation here is £750.

I can’t reasonably separate Mr K’s inconvenience and losses out from the rest of the complaint; the subject matter is the accusation of fraud and policy cancellation and those actions then resulted in the claim outcome, along with any upset caused to Mr K. So my decision considers everything and Mr K will have to decide whether to accept it or not, as a whole. It can’t be accepted in part. And it’s unlikely, if Mr K accepts it that he’ll be able to go to court to challenge UKI for anything further, that he may feel is due in addition to the redress I’ve award. He may like to take legal advice before deciding whether or not to accept my decision.

Turning to UKI’s reply, I’m not persuaded it paid the finance company whilst its claim enquires were ongoing. Its file shows it settled the claim in full by paying the finance company and Mr K. It was only when Mr K asked for the cheque to be reissued that UKI decided to undertake further investigations. I remain of the view that UKI can’t reasonably do that. For completeness I’d add that the key report was very clear that if the car was unlocked the car could be stolen by competent thieves in a matter of seconds.

UKI said it thinks the discrepancies in its list can only exist because Mr K was trying to mislead it. I’m not persuaded from what UKI presented that is most likely the case. And I note UKI has accepted that what it had presented previously did not show that a fair and reasonable finding of fraud had been made by it.

I see UKI has “revisited” its fraud argument. I note the thrust and tone of it centres on Mr K’s change of name and the bankruptcy. I can understand why UKI might have concerns in these respects. But those concerns are not new – UKI was aware of Mr K’s change of name and the bankruptcy when it opted to not re-issue the cheque and instead undertake

investigations which ultimately resulted in its fraud allegation. UKI had its opportunity then to complete further investigations and argue fraud based on the name change and bankruptcy. But it did not do so. UKI explained its fraud allegation centred on a list of concerns and I've explained in my provisional findings why that list, including point 8) about the timing of the bankruptcy, did not evidence a fair and reasonable finding of fraud. Like I said regarding UKI changing its view on the claim, it doesn't fairly and reasonably get a second chance to review this sort of matter. In this respect to update its findings to show the accusation, overall was fair – or would have been fair if more evidence had been gathered and/or it was made on different or more specific grounds. That's not to say that if UKI had come across something wholly new which was of concern to it, it couldn't look at that. But its revised view of the reason for its fraud decision, based on evidence and theories available to it but not follow up on before, does not give me cause to change my view as provisionally stated.

My provisional decision has not changed. My provisional findings are now those of this my final decision. If Mr K accepts it within the deadline set, UKI will be bound by it.

Putting things right

I require UKI to:

- Remove the record of fraud from its own and any industry database.
- Reinstate any cancelled policies, if Mr K wants it to.
- Amend any claim records to show the claim is accepted.
- Cease asking Mr K to repay the sum paid to the finance company.
- Pay Mr K £16,521.62, plus interest* applied on that sum from 3 August 2022 until settlement is made.
- Pay Mr K £750 compensation.

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

My final decision

I uphold this complaint. I require U K Insurance 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 K to accept or reject my decision before 5 September 2023.

Fiona Robinson
Ombudsman