

The complaint

Mr G complains about Admiral Insurance (Gibraltar) Limited (“AIG”) and their decision to decline the claim he made on his motor insurance policy, after his car was sold by a third-party and the funds paid for the car were not released to him as agreed.

What happened

The events and circumstances of the claim are well known to both parties, so I won’t be listing them in detail. But to summarise, Mr G held a motor insurance policy, underwritten by AIG, when he entered into what he now feels was a fraudulent agreement with a third-party garage, who I’ll refer to as “P”, to sell his car on his behalf.

P did sell his car, but they didn’t release the funds of this sale to Mr G. And it transpired that P had done the same to several other individuals, which ultimately led to a criminal investigation, and prosecution, of P and its directors. So, as Mr G was ultimately without his car or the funds of its sale, he contacted AIG to make a claim on his policy.

But AIG declined Mr G’s claim, referring to exclusions they felt applied to Mr G’s circumstances. Initially, the decline centred around Mr G entering into another contract, and AIG’s belief the theft was the proceeds of sale, rather than the car itself. Mr G was unhappy about this decision, so he raised a complaint about it.

AIG responded to Mr G’s complaint and didn’t uphold it. They felt their original decision to decline the claim was fair. And they explained that, if they did follow Mr G’s line of thinking that it was the car that was stolen, then they felt an exclusion relating to theft by deception was applicable. So, they didn’t think they needed to do anything more. Mr G remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and didn’t uphold it. They recognised the significant financial impact the theft had on Mr G. But they didn’t think they could say AIG acted unfairly, or outside of the policy terms and conditions, when declining the claim. So, they didn’t think AIG needed to do anything more.

Mr G didn’t agree. And he provided an additional report from the investigating police officer that he felt our service should’ve obtained. He explained why he felt the opinion of the officer should be considered, and a different outcome reached. This centred around the validity of the contract he signed, and whether it was fair for AIG to rely on the theft by deception exclusion. Our investigator’s opinion remained unchanged and so, the complaint has been passed to me for a decision.

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 done so, I’m not upholding the complaint for broadly the same reasons as the investigator. I’ve focused my comments on what I think is relevant. If I haven’t commented

on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this situation has no doubt had on Mr G. I appreciate it would've been upsetting for Mr G to discover his car has been sold by P, without the funds being released to him as he'd agreed. And I've no doubt it would be both disturbing and worrying for Mr G to find out that P were in fact entering into agreements with customers such as himself, intending to sell a customer's car without ever releasing the money that customer should receive. I also recognise the financial loss caused by this incident is significant and, as Mr G took out a policy with AIG to cover the car that he feels was stolen, I can understand why he'd turn to AIG to make a claim. And, when AIG declined his claim, I can understand why he'd feel unfairly treated, as he was left without his car, or the funds to its value, through no direct fault of his own.

But for me to say AIG should do something more, such as overturn their original decision and decline the claim, I first need to be satisfied they've done something wrong. So, I'd need to be satisfied they failed to act within the terms and conditions of the policy Mr G held when declining the claim. Or, if I think they did act within these, I'd need to be satisfied they acted unfairly in some other way. And, while I recognise this will come as a disappointment to Mr G, I don't think that's the case in this situation.

Before I explain why I've reached this decision, I think it's important for me to set out how I've considered the complaint, and our service's approach. I want to make it clear that AIG were not responsible for the theft, or the circumstances that led to it. Nor are AIG obliged to accept the claim and pay Mr G for the value of his car that was sold. Instead, AIG are expected to consider the individual claim circumstances against the policy terms and conditions they provide.

So, while I recognise Mr G has referred to other claims of customers who engaged P's services being accepted by different insurers, this doesn't automatically mean AIG should be expected to do the same. My decision has focused solely on the circumstances of Mr G's claim, and the policy terms and conditions AIG provide, both of which may be different to that of another victim that's made a separate claim.

And while I do recognise Mr G feels the opinions of the investigating officer should be considered, I must make it clear the investigating officer isn't an insurance claims handler. Nor do I think I can say the officer is an expert in the insurance industry. So, while I have read through the report provided by this officer, I don't think this can be relied upon as expert testimony and so, I've treated it as such.

I note that AIG initially declined the claim referring to the general exception which explains *"We will not pay for any loss, damage or liability directly or indirectly caused or contributed by an agreement you have made under another contract."* And I note Mr G doesn't think it's fair to rely on this as he doesn't think it was a lawful contract, a position supported by the investigating police officer.

But crucially, I don't think the terms and conditions state that the contract entered into must be lawful or legally binding. Instead, it refers broadly to an agreement made under another contract. And I don't think it's in dispute that Mr G entered into a contract, lawful or not, that saw him hand possession of his car over to P, for them to store until it was sold. So, I think it's fair for me to assume that, had Mr G chosen not to enter into this agreement, P wouldn't have had possession of his car. And so, I think it's reasonable for me to assume that P wouldn't have then been able to sell it on Mr G's behalf, and then keep the proceeds of this sale. So, I do think the loss of Mr G's car, and the funds of its sale, was directly caused, and contributed to, by an agreement he made with P under another contract. So, I don't think I

can say AIG have acted unfairly when relying on this exclusion to decline the claim.

I note AIG also further supported their decline of the claim by expressing their belief it was the proceeds of sale that was stolen, rather than the car itself. As Mr G agreed for P to sell the car, and this is what they did, I do understand why AIG have reached this conclusion, although I note Mr G and the investigating officer dispute this.

But even if I was to say that that this conclusion from AIG was unfair, and they should treat the claim as though the car had been stolen, I note AIG feel another exclusion would apply, surrounding any loss when possession is gained by deception.

Specifically, the exclusion states AIG will not pay *“for loss or damage to your vehicle, where possession of it’s gained by deception”*. And in this situation, I think it’s clear AIG deceived Mr G by entering into a contract that, on the balance of probability considering the police investigation, they never had any intention of honouring. So, I don’t think I can say AIG are unfair when stating that, even if the exclusions above weren’t applicable, that this exclusion then would be.

I note Mr G has raised objections to this, referring to examples published on our website about what we think deception looks like. I want to be clear these are general examples given to help inform a customer. They are not an exhaustive list, nor does this information published there supersede any findings made during an actual investigation of a complaint. But in this situation, while I do recognise Mr G attempted to check P’s background and their validity as a business, I don’t think this alters my opinion that P intentionally misled Mr G with an agreement they never intended to honour. And I think it’s reasonable for AIG to consider this to be an example of deception.

So, because of all the above, I think AIG acted in line with the policy terms and conditions when declining the claim, and I think they acted fairly when doing so. And so, I don’t think they need to do anything more on this occasion.

I understand this isn’t the outcome Mr G was hoping for. And I want to reassure Mr G I have carefully considered the clear and significant financial impact this will have, considering the value of his car that was sold without the proceeds being provided to him. But as I explained earlier within my decision, I don’t think AIG are responsible for this loss, as it was P who sold the car without releasing the funds. AIG’s responsibility lay solely with the insurance claim, to ensure it was assessed fairly, and in line with the policy they provided. And I think it was on this occasion.

My final decision

For the reasons outlined above, I don’t uphold Mr G’s complaint about Admiral Insurance (Gibraltar) Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 15 January 2024.

Josh Haskey
Ombudsman