

The complaint

L has complained about U K Insurance Limited's (UKI) decision to turn down its claim under its Motor Fleet Insurance policy for a stolen vehicle (vehicle M). It's also unhappy about the way the claim was handled by UKI.

L is represented by Mr C, who is a director of its insurance broker.

What happened

Vehicle M, which L hired under a hire agreement from someone who I will refer to as Mr G, was stolen at the beginning of February 2023. The registration document for the vehicle shows it was registered to Mr G and his company, who I'll refer to as J, jointly. The hire agreement was between Mr G and L and started in October 2022 with no end date. When vehicle M was stolen it was parked outside J's premises and L has said some of its employees were due to start work on behalf of L for J at that premises the next day.

L made a claim under its policy. Mr C had several conversations with employees of UKI about the claim in which he thinks the employees said UKI was going to settle it. However, UKI decided not to do so. And it appointed a claims investigator to take statements from a director of L, who I will refer to as Mr T, and from Mr G.

After UKI had received copies of the statements and considered L's claim further, it declined it on the basis that vehicle M wasn't in the custody or control of L at the time it was stolen.

Mr C made two complaints on behalf of L. The first was about the way the claim had been handled up to the point the statements had been obtained and provided to UKI. And he then made a later complaint about the rejection of the claim.

UKI issued two final response letters. On the first complaint it acknowledged the claim hadn't been well handled and agreed to pay L £200 in compensation for the inconvenience this had caused to it. In the second final response it said it was satisfied its decision to turn down the claim was correct.

Mr C asked us to consider L's complaint. One of our investigators did this. She considered UKI's decision to turn down the claim on the basis vehicle M wasn't in L's custody or control at the time it was stolen was reasonable. And she explained she thought the £200 in compensation for the inconvenience caused by poor claim handling was fair.

Mr C didn't agree with the investigator's view and asked for an ombudsman's decision.

The complaint was referred to me and having reviewed the evidence provided, I asked both Mr C and UKI to provide some further evidence. I asked Mr C to get L to explain whether the work it was due to carry out at J's premises had actually started at the time vehicle M was stolen. I also asked him to get L to provide the names of the employees of L who were going to carry out the work. I asked UKI for copies of the statements obtained from Mr T and Mr G. And for a copy of the hire agreement provided to it by L.

Mr C came back to explain the work by L hadn't started at J's premises, but it was due to start the day after vehicle M was stolen. And L has provided the names of the four employees who were going to carry out the work. And I received copies of the statements from UKI.

I issued a provisional decision on 6 February 2024 in which I set out what I'd provisionally decided and why as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

L's policy provides the following cover under 'Section 1A | Loss or Damage by Fire or Theft':

'We will pay for Damage to a Motor Vehicle, (except as provided for under Section 8 of this Policy whether insured or otherwise) occurring in the Territorial Limits during the Period of

Insurance, caused by:

- 1 fire, lightning or explosion; or*
- 2 theft or taking without lawful authority, or any attempt thereat.*

'Motor Vehicle' is defined in the policy as follows:

Any motor vehicle owned by You or in Your custody or control (including any Specified Vehicle(s) stated in the Schedule and any Accessories) as stated under Vehicle Description/Registration Mark in Your Certificate(s) of Motor Insurance and falling within one of the Vehicle Types described below:

Commercial Vehicle

Any vehicle manufactured and used, to carry goods for Your Business purposes (other than an Agricultural Vehicle)...

Special Type

Any vehicle which is manufactured to operate primarily as a tool of trade which is not a passenger carrying vehicle.

This Definition excludes:

- i any vehicle registered outside of the Territorial Limits;*
- ii any privately owned motor vehicle not owned by You and not in Your custody or control unless agreed otherwise by Us;*
- iii any motor vehicle running on rails or cables; or*
- iv any motor vehicle not running on terra firma...'*

The policy also has several exclusion clauses. But I do not consider any of them are relevant so far as L's claim is concerned.

It is not clear exactly which vehicle category vehicle M falls into, but I consider it is reasonable to say it falls in to one of the two I've set out above. And, as it was insured under L's policy, it does not appear to be in dispute that it falls within one of the above categories.

For me the key issue in this case is whether vehicle M was in the custody or control (my emphasis) of L at the time it was stolen.

I do not consider it was in L's control at the time, as it was parked on a street outside J's premises and no-one from L was anywhere near it. But I do consider vehicle M was in L's custody at the time it was stolen. I've explained why below.

L had entered into a hire agreement with Mr G for vehicle M and this meant it was legally responsible for it. Mr G hadn't insured vehicle M, which I think also shows L was legally responsible for it. The Cambridge Dictionary defines 'custody' as 'the legal right or duty to care for someone or something'. And because L was legally responsible for vehicle M and had a duty to care for it because of the hire agreement, I think it can be said to have been in L's custody at the time it was stolen.

Vehicle M was not in use at the time it was stolen. But, according to Mr T's statement, which he has confirmed, it was due to be used by employees of L the next day. This reinforces my view that L was still responsible for it, i.e. it did have custody of it, despite not having control of it.

In an email to Mr C from an underwriter at UKI dated 9 March 2023, a copy of which has been provided by Mr C, the underwriter said that while the term custody or control could be considered vague, it actually covers all eventualities for when a policyholder may have a vehicle in their possession, whether this be loaned, hired or leased. And she went on to suggest that where an employee takes a vehicle hired to the policyholder to the airport and leaves it there it would be covered if it was done with the policyholder's specific consent. This seems a similar situation to the situation with vehicle M when it was stolen, in that it had simply been left parked by someone who did work at times for L on a casual basis with L's permission. This also reinforces my view that vehicle M should be viewed as in L's custody at the time it was stolen.

The fact that the underwriter actually accepts the term 'custody or control' could be considered vague is of note. I say this because I consider it is unclear what UKI actually means by the term 'custody', as it is not defined in the policy. From its approach it seems UKI considers it to be the same as control. But if this was the case the 'or' would not need to be there and there would be no real need to include the word custody at all. Where a term is unclear, when deciding the fair and reasonable outcome to a complaint, I consider it appropriate for the reasonable interpretation that most favours the policyholder to be used. This is because the insurer drafted the policy and had the opportunity to define any terms it felt needed a definition. If it failed to do so, I do not think the policyholder should be penalised for this.

In view of what I've said it follows that I consider L's claim for vehicle M is covered by its policy, because at the time it was stolen it can be said it was in L's custody. It was not in L's control, but this doesn't matter, as it only needed to be in either its custody or control.

Therefore, I have provisionally decided the fair and reasonable outcome to L's complaint is for UKI to be required to settle its claim for vehicle M in accordance with the claim settlement terms in the policy.

I do not propose to award interest on the amount due to L, as it seems to me that once it receives the settlement amount it will have to pass this on to Mr G or the settlement will be paid with L's authority direct to Mr G.

And I consider the compensation UKI has paid to L for the inconvenience caused by, what I agree, was poor handling of the claim is adequate.

I gave both parties until 20 February 2024 to provide further comments and evidence in

response to my provisional decision.

Mr C responded on behalf of L to say neither he nor L had anything further to add.

UKI has not provided any further comments or evidence.

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.

As L has said it has no further comments or evidence to provide in response to my provisional decision. And because UKI hasn't provided any further comments or evidence, I see no reason to decide on a different outcome to the one I set out in my provisional decision.

Putting things right

For the reasons set out in my provisional decision, I have decided to uphold L's complaint and make UKI do the following:

Settle L's claim in accordance with the claim settlement terms in its policy.

Pay L £200 in compensation for inconvenience if it has not done so already.

My final decision

I uphold L's complaint and order U K Insurance Limited to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 20 March 2024.

Robert Short
Ombudsman