

The complaint

A company, which I'll refer to as C, complains that Society of Lloyd's (SOL) unfairly declined a claim under its Commercial Combined Insurance policy for theft of company equipment and tools from its vehicle.

All references to SOL include the agents they have appointed to handle claims.

Additionally, although other individuals have been involved in the correspondence, for the sake of simplicity I have just referred to C and SOL as being involved in the activities of this complaint.

What happened

The details of this complaint are well known to both parties, so I won't repeat them in detail here.

To briefly summarise, C took out a Commercial Combined Insurance Policy. In July 2022, C made a claim for theft of company equipment and tools from its vehicle, however SOL declined the claim.

C said it collected company equipment from a client which was then put in the back of the vehicle with the seats down. On the way back to the office, the driver stopped at a service station for a break. He was away from the vehicle for approximately 30 minutes. When he arrived back to the vehicle, he didn't notice anything unusual or that the equipment was missing. He then drove to the office and went inside to collect his colleague to help unload the equipment. Upon returning to the vehicle, they discovered that the equipment and associated tools were missing. The driver said he was unsure if the theft occurred at the service station or outside the office, but he maintained that on both occasions he locked and secured the vehicle.

Initially SOL said that there were no signs of forced entry into the vehicle. C provided video recordings which it had found online, to show a number of ways entry could be gained into a vehicle similar to C's without any signs of forced entry.

SOL maintained that if entry to the vehicle was gained in the way described by C, it would have triggered the vehicle alarm, alerting someone to the fact that something was wrong and drawing attention to the theft. C said it's possible that the alarm sounded when the driver was at the service station but switched off by the time he returned to the vehicle.

SOL maintained that entry could not have been gained in the way described by C. In SOL's final response they said that there were only two other alternatives of getting into the vehicle without the keys. The first is by using a 'code grabber' device, or secondly, that the driver left the vehicle unlocked. SOL explained that a dealership for this particular vehicle confirmed that the vehicle in question did not have keyless entry that would enable the use of a code grabber. It therefore concluded that it was extremely unlikely that a 'code grabber' device was used by an opportunist thief. And they thought it was more likely than not that the driver didn't lock the vehicle, resulting in the theft.

C's policy contains an exclusion which states that loss won't be covered if the vehicle isn't locked, and SOL relied on this to decline C's claim.

Our Investigator considered C's complaint and upheld it. He was persuaded that entry into the vehicle could've been gained without causing any damage. He concluded that SOL hadn't evidenced that the vehicle wasn't locked and therefore they couldn't rely on the corresponding policy exclusion. He therefore recommended that SOL meet C's claim. SOL didn't agree with our Investigator and so the case was passed to me to decide.

I sent an email to both parties in December 2023 explaining that I was minded to reach the same outcome as the Investigator but for different reasons so I wanted to give both parties an opportunity to respond. In summary, I said that there was a 'code grabber' available on the market which I believed would work on the same make and model as C's vehicle, to lock and unlock it. Therefore, on a balance of probability, I thought the theft could've occurred in the way described by C. So, I didn't think it fair and reasonable for SOL to rely on the exclusion that it had.

In response, SOL pointed out that the evidence on the code grabber in question states that it is an intelligent emulator of keyless access systems. However the evidence on the file, including that from a dealership, states that the vehicle in question doesn't have keyless entry. SOL's loss adjuster reviewed the evidence and concluded that the vehicle doesn't have keyless entry which would enable the signal jamming alleged by C.

Furthermore, SOL also pointed out that it had given C the opportunity to provide further expert evidence from a suitably qualified expert to reconsider the claim, but C hasn't provided such evidence.

My provisional decision

In February 2024, I issued a provisional decision. I said the following:

"I know this will be very disappointing for C but I'm not intending to uphold this complaint. I'll explain why.

Both parties have provided detailed submissions to support their position. I want to assure them I've read and carefully considered everything they've said, but I won't comment on everything.

The issue for me to decide in this instance is whether SOL have acted fairly and reasonably by relying on a policy exclusion to decline C's claim on the basis that the vehicle was left unlocked.

The exclusion which SOL has relied on to decline C's claim states:

"Section 3 – Goods In Transit

Exclusions...

7) Damage caused by theft or attempted theft of the Property insured and/or Tools and/or Clothing and Personal Effects from any unattended Vehicle being any Vehicle with no person in charge or keeping the Vehicle under observation and able to observe or prevent any attempt by any person to interfere with the Vehicle unless You have ensured that:

- a) all doors windows and other points of access have been locked where locks have been fitted; and
- b) all manufacturers' security devices have been put into effect; and
- c) the keys have been removed from any unattended Vehicle; and
- d) unattached trailers have anti-hitching devices fitted and they are put into effect."

The onus is on SOL to show it would be fair to rely on the above policy exclusion. I therefore need to consider whether SOL have correctly applied the exclusion when declining C's claim.

It is difficult to know now exactly what happened in the time between the equipment being collected and the vehicle arriving at C's premises. In situations like this, where the evidence is incomplete or contradictory, I'll make my decision on the balance of probabilities. That is, what do I think is more likely than not, given the evidence which is available and the wider circumstances.

I've considered the circumstances of the claim in detail. C said the equipment was stored in bright yellow boxes, which were loaded into the back of the vehicle with the seats down. I note from a video recording provided by C of the vehicle in question that the windows aren't tinted and so equipment would've been easily visible from outside. I therefore think that if the equipment was taken at the service station, the driver would've noticed when he returned back to the car. But in any event, even if I was to accept that he didn't notice, I need to consider how someone could've taken the equipment from a locked vehicle.

C said that its vehicle was locked at all times. It suggested that a code grabber may have been used to gain entry into the vehicle or a device was used to prize the door open.

C has suggested that there is a 'code grabber' available on the market for this particular vehicle. I've considered this information, but I note that the 'code grabber' C refers to is reported to be successful on vehicles which have keyless entry. From what I've seen, I'm satisfied that C's vehicle doesn't have keyless entry and therefore the 'code grabber' wouldn't work on C's vehicle. I've not seen any evidence that there is a 'code grabber' available which could successfully be used on this particular vehicle. I'm therefore not persuaded that a 'code grabber' was used in this case.

C also provided a video clip to demonstrate how the vehicle door could be prized open. It is evident from these clips that vehicle alarm was triggered when using this method. C said that alarm may well have been triggered when the driver was at the service station but switched off by the time he returned to the vehicle. C provided the Ombudsman Service a recording of the vehicle in question to demonstrate that the alarm switched off by itself after 11 minutes – the driver was away for approximately 30 minutes when he stopped at the service station.

I've thought about what C has said very carefully, but on balance, I'm not persuaded that's what happened in this case. I say this because, the vehicle was parked at a service station carpark which would be in constant use, so if someone was to break in, I think it's likely they would have been seen by passers-by. Also, if the alarm then went off and yellow cases were being unloaded, it would draw the attention of someone. I also think if an opportunist thief was attempting to break into cars, there'd be reports of this happening to other vehicles, and I've not seen any evidence to suggest there was.

Taking all the above into consideration, on balance, I think the decision SOL have come to, that the vehicle was left unlocked, is reasonable. In these circumstances, I think it would be fair to conclude that the exclusion can reasonably apply here. It therefore follows that SOL's decision to decline the claim, based on the exclusion they relied on, was fair and reasonable. I understand that this won't be the outcome C would've liked, but currently, I can't

reasonably ask SOL to do anything further to resolve this complaint.”

Responses to my provisional decision

SOL responded to say they have nothing further to add.

C responded to say it was disappointed with the provisional decision.

In summary, C said the provisional decision didn't explain why the outcome had now changed and no new evidence had been provided to substantiate the reversal. C maintains that its vehicle does have 'keyless entry' and therefore vulnerable to code grabber attacks. C doesn't agree that a passer-by would report the incident as it would've been performed in such a way as to not raise any suspicions. C also said there may have been other vehicles broken into on the same day, but it simply doesn't know.

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.

When considering what's fair and reasonable in the circumstances I need to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to be good industry practice at the time.

I will start by explaining that I'm not a car security expert. My role is consider the available expert opinions to decide whether SOL made a decision which was fair and reasonable in all the circumstances, based on those expert opinions.

If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. This is not intended as a discourtesy, but a reflection of the informal nature of the Financial Ombudsman Service.

It is difficult to know now exactly what happened on the day of the theft and neither party are able to provide conclusive evidence. I must therefore reach my decision on the available, inconclusive evidence. This therefore requires a judgement as to what is likely to have occurred on the balance of probabilities.

I have carefully considered the representations made by C in response to my most recent provisional decision. However, I remain satisfied that SOL acted fairly and reasonably in declining C's claim based on the exclusion they relied on. I know this will come as a disappointment to C, but I will explain why.

C said in its response to my provisional decision that its vehicle does have keyless entry and therefore is vulnerable to code grabbers. I have thought about this very carefully, and while C has expressed its own opinion on this, I haven't seen any evidence from an expert to substantiate that this is the case.

SOL has provided evidence from a director of a dealership, which states that C's vehicle key isn't a keyless entry fob and therefore cloning would not be possible. This has been supported by photos of the key to demonstrate what a keyless entry fob looks like and a photo of the C's vehicle key. On this basis, I am persuaded that the vehicle doesn't have keyless entry. My understanding is that without keyless entry, the code grabber in question wouldn't have worked on C's vehicle.

C has mentioned there are two different methods used by devices such as code grabbers to gain entry into vehicles – relay attacks and signal jamming. From what I understand, a relay attack copies the signal from the key and transfers it to a device such as a code grabber. A signal jamming device prevents the vehicle from being locked. C said they're not suggesting a relay attack was used to gain entry into its vehicle and so it must've been a signal jamming device. From the evidence I've seen, I'm not persuaded that a signal jamming device was used either because the driver said the vehicle was locked when he returned to it at the service station. That wouldn't have been possible if the signal jamming device prevented the vehicle from being locked in the first place.

The only other explanations which have been given for how the theft could have occurred is either the vehicle was left unlocked by the driver, or because the door was forced open by a thief using tools. I've explored both methods in my provisional decision previously, and I've not been provided with any further evidence to persuade me to change my opinion.

On balance, I don't think it's likely that a thief would have forced a vehicle door open and set off the alarm while offloading bright yellow boxes from the vehicle, without anyone noticing. So, whilst I acknowledge this is possible, I am not persuaded that this is more likely than not what happened.

SOL said that it was mostly likely the vehicle was left unlocked by the driver, resulting in the theft in question. Taking everything I've said above into consideration, on balance, I think the decision SOL have come to, that the vehicle was left unlocked, is reasonable. It therefore follows that SOL's decision to decline the claim, based on the exclusion they relied on, was fair and reasonable.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 26 August 2024.

Ankita Patel
Ombudsman