

## **The complaint**

Mrs C has complained about One Insurance Limited. It provides her car insurance cover and declined a claim she made for theft.

## **What happened**

Mrs C was looking to sell her car. She used a recognised internet site to advertise it. A prospective buyer got in contact and Mrs C arranged for her husband to show the buyer the car. Whilst viewing the car, the keys, at one time, were in the ignition with the engine running, with Mrs C's husband and the buyer stood at the rear of the car. The buyer pushed Mrs C's husband out of the way, jumped in the car and drove off at speed with all of the doors open.

One Insurance considered the claim but quickly decided to decline it. It said its policy wouldn't cover instances where the car had been left unlocked with the keys inside, nor where reasonable precautions had not been taken to protect the car. When Mrs C complained to the Financial Ombudsman Service, One Insurance said the policy also wouldn't cover circumstances where loss by deception had occurred.

Our Investigator didn't think that any of the exclusions reasonably applied in the circumstances here. Particularly noting that the car had not been left, that physical force had been used to commit the theft and that Mrs C did not appear to have acted recklessly. She felt One Insurance should look to settle the claim in line with the remaining terms of the policy, applying 8 per cent simple interest to any settlement made.

Mrs C indicated she was satisfied by that. One Insurance said it disagreed with it. It said it maintained that Mrs C had failed to protect her car – it said the keys should have been kept on Mrs C's husband's person at all times. Our Investigator explained that Mrs C was not required to take all possible precautions – just reasonable ones. Which our Investigator felt Mrs C had done. But One Insurance was not minded to accept our view so the complaint was referred for an Ombudsman's 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.

One Insurance has not provided a full copy of its policy wording to this service. But the terms it has referenced are quite common to many policies of insurance – so common that this service has established approaches to dealing with complaints about them.

### Keys in the car

Insurers include terms that relate to not covering claims where keys are left in cars because they want to guard against negligence of policyholders. And this service's approach is to consider whether the car was left ie that the driver moved away from the car and/or that their attention was elsewhere, not on the car. That didn't happen here. Here Mrs C's husband

was right next to the car and looking at its rear. He had not 'left' the car and his attention was on the car. As such it wasn't fair or reasonable, in my view, for One Insurance to seek to rely on such a term to decline the claim.

### Deception

This is another term insurers use to guard against careless actions of policyholders. Our view is that if force and/or violence are used to perpetrate the theft, with the thief having taken advantage of a small window of opportunity to steal the car, it isn't fair for insurers to rely on a term like this to defeat the claim. That's because in those circumstances the theft would be more akin to a car-jacking. Here force was used to create a small window of opportunity for the car to be stolen – so small the car was driven off with all the doors open. So it wasn't fair or reasonable, in my view, for One Insurance to seek to rely on such a term to decline the claim.

### Reasonable precautions

Some insurers will include either an exclusion or condition into the policy, requiring the policyholder to take all reasonable precautions to protect the car. Our approach to this type of term follows that set out by the courts – in short that for an insurer's liability to be successfully declined, a policyholder must have been shown to have acted recklessly (not just carelessly). The policyholder, having noted a risk, must be shown to then have not acted reasonably to avert that risk.

I know One Insurance has referenced that the prudent action that should have been taken was for Mrs C's husband to have taken the keys out of the ignition, when his attention was drawn by the buyer to the rear of the car. But the relevant test here isn't what a 'prudent' person would generally have been expected to do. Rather One Insurance should be considering what action Mrs C took and whether that was reasonable in the specific circumstances at hand.

To fairly assess Mrs C's role in this, the whole sale situation needs considering. Mrs C was clearly somewhat wary of selling her car privately. She used a recognised sales site and she arranged for her husband to meet the buyer, conduct the test drive and show the buyer around the car. I bear in mind that in the run up to Mrs C's husband getting out of the car with the engine running, he and the buyer had spent some time together and seemingly Mrs C's husband hadn't detected any threat from the buyer. I'm also mindful that after exiting the car and in the run up to the buyer forcing him out of the way, he was positioned between the buyer and the driver's door. I haven't seen that Mrs C or her husband acted recklessly such as to allow the buyer easy access to the vacant driver's seat, where the key was in the ignition. I bear in mind that the theft was only possible because the buyer resorted to the use of force. Given these details, I'm not persuaded that One Insurance has shown that Mrs C failed to take reasonable precautions to protect her car. I'm satisfied that in the circumstances here it wasn't fair or reasonable for One Insurance to seek to rely on such a term to decline the claim.

### What that means for Mrs C

As One Insurance hasn't persuaded me that it had fair and reasonable grounds to decline liability for this loss, it will now have to settle it. To any settlement it will have to add interest.

Our Investigator did not recommend payment of any compensation. Whilst One Insurance got this wrong, I haven't seen that Mrs C was particularly upset about this – and some frustration, even occasionally experiencing disappointment, can reasonably be expected when dealing with a financial business. I note she did not ask for compensation, either when

making the complaint or when responding to our Investigator's view. I bear in mind that One Insurance didn't ever indicate it would be settling the claim. I also note that its decline, whilst wrong, along with its final response to the complaint, was issued quickly. So I'm satisfied there are no grounds to warrant a compensation award here.

### **Putting things right**

I require One Insurance to settle Mrs C's claim, in line with the remaining terms and conditions of the policy. To any settlement made, 8 per cent simple interest\* should be added from the date of loss until the settlement is made.

\* HM Revenue & Customs may require One Insurance to take off tax from this interest. If asked, it must give Mrs C a certificate showing how much tax it's taken off.

### **My final decision**

I uphold this complaint. I require One 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 Mrs C to accept or reject my decision before 17 April 2024.

Fiona Robinson  
**Ombudsman**