

The complaint

Miss R complains about how First Central Underwriting Limited, previously known as Skyfire Insurance Company Limited, dealt with a claim against her motor insurance policy. Reference to First Central includes its agents and its previous trading name.

What happened

Miss R says that she parked her car on her driveway at approximately 6pm on 16 March 2023 and locked the car. On the morning of Friday 17 March 2023, she discovered that the driver's door and window were wide open. There had been rain that night, so the inside of the car was wet. Miss R says that, initially, it wasn't apparent that her car had been damaged. Miss R reported the matter to the police on the same day she discovered her car door and window open.

Miss R says that over the following weekend, the driver's window of her car opened and closed randomly then remained open and the front indicators operated at increased speed. On 20 March 2023, Miss R made a claim against her policy via First Central's website. As the car wasn't secure, a message on the website asked Miss R to phone First Central, which she did. Miss R's husband, Mr S, dealt with the call. I'll refer to that call in more detail below.

First Central referred to Miss R's car being an initial write-off and mentioned arrangements for collection of the car. Mr S didn't want First Central to arrange collection of the car as he and Miss R didn't want to be without the car pending the inspection and valuation by First Central's engineers. He said that, depending on the valuation and the salvage value, they may want to keep the car.

Miss R arranged for her local garage to do temporary repairs so that the window was permanently closed and she could use the car. She says that the driver's door became stiff.

On 8 April 2023, First Central asked Miss R for photographs of the car, which she provided. On 20 April 2023, First Central said that its engineer had reviewed the photographs and said that the car had likely suffered an electrical or mechanical failure, which wasn't covered by the policy. Miss R complained about that. She said that the cause of the damage was the attempted theft.

In response to Miss R's complaint, First Central agreed that it hadn't provided good service during the first notification of loss and paid compensation of £100. It maintained its position about the claim and said that the damage isn't consistent with vandalism or attempted theft. It relied on its engineer's report which said that the damage was consistent with electrical or mechanical wear and tear. First Central said that it would review the further engineer's report following physical inspection of the car.

On 8 June 2023, an engineer instructed by First Central inspected the car. The engineer concluded that there was no evidence of forced entry, so he couldn't establish a valid claim. Miss R didn't accept that.

Miss R says that First Central accepted the claim when she first contacted it by phone. She wants it to deal with her claim and pay her the total loss value at today's date. Miss R also wants First Central to waive the excess due under the policy and increase compensation in relation to service issues.

Following this service's request for information, First Central offered additional compensation of £250 in relation to service issues.

One of our investigators looked at what had happened. She said that there had been avoidable delays in First Central dealing with the claim and that its offer of total compensation of £350 in relation to service issues was fair.

The investigator said that First Central was entitled to rely on the engineer's findings about the cause of the damage. The investigator said that it was reasonable for First Central to conclude that the damage to Miss R's car was caused by an electrical failure - which isn't covered by the policy - rather than attempted theft. She thought that First Central had acted reasonably in arranging for the engineer's report to be reviewed in-house.

Miss R didn't agree with the investigator. She responded in some detail, which I won't set out here. Essentially, Miss R says that the damage to her car was caused by malicious damage or attempted theft. She is sure that she left the car secure. Miss R says that she reported the matter to the police and provided First Central with a crime reference number.

Miss R says that she wanted the car repaired, not written off. She says that the car had a recent MOT and was working properly before the events which led to the claim. Miss R says that it's common knowledge that it's possible to open a car door or window without leaving signs of damage. She says that after First Central had accepted her claim, she noticed the door was stiff, which may be as a result of it being forced open. Miss R says that First Central wanted to arrange to collect the car, so it accepted the claim. She says that if she had allowed First Central to arrange collection of the car, her claim would have been settled.

Miss C asked that an ombudsman consider her complaint, so it was passed to me to decide.

My provisional decision

On 20 March 2024, I sent both parties my provisional decision in this case in which I indicated that I intended to uphold the complaint. I said, in summary:

- First Central's initial explanation of its process for deciding whether a car is a total loss was confusing. Miss R was no doubt disappointed to discover later that First Central didn't accept her claim.
- Miss R's policy includes cover for malicious damage and attempted theft. It's for Miss R to show that an insured event took place. When there's a dispute about what happened, I reach my decision on the balance of probabilities. I decide what I think is more likely to have occurred, based on the information provided and the surrounding circumstances.

- On balance, I thought that Miss R has shown that malicious damage or attempted theft occurred on 16/17 March 2023. Her account of what happened remained consistent throughout her claim and complaint and she reported the matter to the police. I accepted her explanation of why she didn't take photos of her car when she first discovered it. Weather records show that it rained on the night of 16/17 March 2023.
- I didn't think that First Central acted fairly or reasonably in relying on the report of its in-house engineer or the engineer it instructed to inspect Miss R's car. That's because those engineers relied on the absence of evidence of a forced entry, but I didn't think that a forced entry is necessarily apparent in malicious damage or attempted theft. It's possible for an attempted theft or malicious damage to take place without signs of a forced entry. And the engineer instructed by First Central inspected Miss R's car almost three months after the incident, so water ingress would no longer be apparent.
- In any event, Miss R's claim could have proceeded on the basis that it was accidental damage.
- A fair resolution of this complaint requires First Central to deal with Miss R's claim on the basis that her car was damaged by malicious damage or attempted theft on 16/17 March 2023.
- Miss R's policy provides that the market value is assessed at the time of loss or damage, not at the time of the settlement of the claim.
- Miss R's policy provides that in settling a claim, First Central may repair the damage or, if the car is a total loss, it may replace the car or pay Miss R money in settlement. If the settlement of the claim leads to a payment to Miss R, First Central should pay 8% simple interest per year on any settlement amount, from the date of the claim to the date of payment, to compensate her for not having the money.
- There's no basis on which I could fairly direct First Central to waive the excess due under the policy in this case.
- Whilst First Central isn't usually responsible for the cost of temporary repairs, in the particular circumstances here I think it's fair and reasonable for First Central to reimburse Miss R for the reasonable costs she incurred for temporary repairs and pay interest on that amount. That's because there was confusion and delays in dealing with Miss R's claim before it was declined incorrectly. As a result of that, it was necessary for Miss R to arrange temporary repairs so that she could continue to use her car. Miss R should provide First Central with evidence of her payment for the temporary repairs.
- In all the circumstances, I think that First Central's offer of £250 compensation in addition to the £100 it has already paid is fair and reasonable.

Responses to my provisional decision

Miss R responded to say that she accepted my provisional decision. She provided a recording of a phone call in which First Central said that the market value of her car at the time of the claim was £1,705.

First Central sent a further engineer's report dated 28 March 2024 which said, in summary:

- There was no evidence of attempted theft - no damage to the locks or ignition and no items stolen from the car.
- The mechanical failure of the window was the proximate cause of the claim, which is excluded from cover.
- Miss R's car was 14 years old at the time of the incident and it's likely that the window mechanism was original and that age is a factor in its failure.
- Miss R's description of events is consistent with a failure of the window mechanism.
- It's "*near impossible*" to forcibly pull down a window without the glass shattering because of how the glass sits in the frame and the strength of the window mechanism.
- The windows of Miss R's car are operated electrically, so the ignition would need to be on and a key present.
- The garage where Miss R took her car for temporary repairs wasn't able to use the window winding mechanism to raise the window.
- The only possible conclusion is that there was mechanical failure of the window mechanism and that Miss R failed to secure her car.
- The video showing both indicator lights flashing rapidly is consistent with an electrical failure, which would also cause the failure of the window.

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've taken into account the law, regulation and good practice. Above all, I've considered what's fair and reasonable. The relevant rules and industry guidance say that First Central has a responsibility to handle claims promptly and fairly and it shouldn't reject a claim unreasonably.

I've reconsidered all that's been said and provided. It's common ground that Miss R's car had electrical or mechanical damage. Miss R says that was caused by water ingress following attempted theft or malicious damage. First Central says that it was caused by electrical or mechanical failure, which is excluded in the policy.

As I said in my provisional decision, it's for Miss R to show that an insured event took place. If an event is covered in principle but an insurer wants to rely on an exclusion in the policy, the onus shifts to the insurer to show how that exclusion applies.

I remain of the view that Miss R has shown that an insured event took place. As I said in my provisional decision, Miss R's description of what happened has remained consistent throughout her claim and complaint. And she reported the matter to the police.

As First Central wants to rely on an exclusion in the policy in relation to electrical or mechanical failure, it needs to show, on balance, that it's more likely than not that the damage to Miss R's car was caused by electrical or mechanical failure. I don't think it's done that here.

First Central says that Miss R's description of events is consistent with a failure of the window mechanism. But a failure of the window mechanism doesn't explain why Miss R found that the door of her car was open.

First Central has referred to the age of Miss R's car, the absence of forced entry or theft of items from the car and the difficulty of forcing the window open. It says that the window could only be opened when there's a key and the ignition is turned on. I don't think that the age of Miss R's car, in itself, shows that it's more likely than not that the damage was caused by electrical or mechanical failure. First Central hasn't provided an engineer's report on the mechanical or electrical systems of Miss R's car.

It's possible for attempted theft or malicious damage to take place without signs of a forced entry. It's also possible that whoever opened Miss R's car door didn't do so in order to steal items from the car. Or it may be the case that there were no items to steal.

We can't know for sure how the window of Miss R's car was opened. But I'm satisfied that it's possible for there to have been attempted theft or malicious damage without signs of a forced entry.

Based on what I've seen, and for the reasons set out above and in my provisional decision, I remain of the view that Miss R has shown that malicious damage or attempted theft occurred on 16/17 March 2023, which led to water ingress and the subsequent damage. I don't think that there's sufficient evidence to conclude that it's fair and reasonable for First Central to rely on the exclusion in the policy which relates to electrical or mechanical breakdown.

Putting things right

In order to put things right, I now direct First Central to:

- Settle Miss R's claim on the basis that there was damage to her car caused by malicious damage or attempted theft on 16/17 March 2023.
- If the settlement of the claim is by way of payment of money, pay interest on any settlement at the simple rate of 8% per year, from the date of the claim to the date of payment.
- On production of evidence of payment, reimburse Miss R for the reasonable cost of temporary repairs and pay interest on that sum at the simple rate of 8% per year, from the date Miss R paid for the temporary repairs, to the date of payment.
- Pay Miss R the compensation of £250 it has now offered to pay in addition to the £100 it has already paid.

My final decision

My final decision is that I uphold Miss R's complaint. First Central should now take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 27 May 2024.

Louise Povey
Ombudsman