

The complaint

Mr A says Ageas Insurance Limited didn't cover his claim for the theft of his car when he made a claim on his motor insurance policy.

What happened

Mr A put his car on sale in August 2023. He agreed to a potential buyer ('J') sending a mechanic ('M') to his home to check the car. M asked for the key to turn the engine on. Later, whilst Mr A was distracted momentarily, M drove the car away. Ageas declined the claim as it said Mr A had breached a policy exclusion by carelessly or recklessly allowing a buyer, someone posing as one, or someone acting on behalf of one, to defraud or deceive him. As the car was on finance, Mr A continued to make the monthly payments for it to the finance firm and was pressed by it to pay the very large sum still owed on it.

One of our investigators reviewed Mr A's complaint. He didn't think he'd acted carelessly or recklessly. In his opinion, M took advantage of a small window of opportunity to take the car when Mr A was distracted, therefore the theft was akin to a carjacking. He didn't think it was reasonable for Ageas to rely on the policy exclusion, so he thought it should settle the claim (with interest) and pay Mr A £300 compensation for distress and inconvenience.

Ageas said handing over the key for an expensive car to M was careless when Mr A could have started the engine himself. It also said that as Mr A was at the back of the car when it was taken, he wasn't in a position to prevent the theft. The investigator pointed out that he'd based his decision on Mr A's version of events, as Ageas hadn't provided all the information he'd asked for. He said if Ageas had evidence that showed the circumstances were different to Mr A's version (including its call recordings) he'd consider it. Ageas said it had provided the call recordings, but it turned out they'd been sent to the wrong email address. Ageas said it would send them again. As we received nothing further from Ageas the complaint was passed to me for review.

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.

In cases of theft by deception, we consider whether a consumer voluntarily handed over control of their car to a thief or whether they intended to retain control of it. The particular circumstances in each case will be different. But the strict interpretation of a policy exclusion of the type relied on by Ageas can sometimes result in an unduly harsh outcome. We look at what's fair and reasonable in each case, as well as the policy wording.

Mr A gave us a full account of the circumstances leading to the theft. He provided text messages between himself and J, in which I think J comes across as a genuine potential buyer. I don't think it's unusual for a potential buyer to want a third party to inspect a car on their behalf. So I can see why Mr A wasn't suspicious about J's request. And I don't think it's unusual for potential buyers or their representatives to want the engine to be switched on. I

don't think it would have made a difference to the outcome had Mr A done that himself. The car could have been taken regardless of who started the engine. M didn't try to drive off as soon as he was given the key. He waited until Mr A was very briefly distracted later on.

Mr A says M turned the engine on, opened the boot using the button inside the car, then got out and looked at various parts of the vehicle (as expected) accompanied by Mr A. It was only when Mr A went to close the boot - using the button on it, which means standing behind the car for a few seconds - that M entered the car and drove it away. I think he took advantage of a very small window of opportunity, as Mr A never left the immediate proximity of the car. I don't think he voluntarily handed it over to the thief, that he could reasonably have anticipated what would happen, or that he acted carelessly or recklessly.

Based on the available evidence, I don't think it's fair and reasonable in this case for Ageas to rely on the policy exclusion. So I think it should settle the claim. Since the theft, Mr A has continued to pay the finance firm, so the settlement sum payable to it will be lower than the initial sum quoted. Therefore Ageas should also refund the payments made by Mr A to the finance firm (plus interest) in order to settle the claim.

Mr A was traumatised by the theft, but he expected that the claim would be paid. Since the decline he's faced great worry about how to pay off the finance, as well as significant frustration and distress about the claim not being paid and the impact on his family. I think it would be fair and reasonable for Ageas to pay him £300 for distress and inconvenience.

My final decision

My final decision is that I uphold this complaint. I require Ageas Insurance Limited to settle the claim (in line with the policy's other terms and conditions) by paying the sum outstanding to the finance firm and by refunding the sum Mr A has paid the finance firm since the theft.

Ageas should add interest to Mr A's refund, at the simple yearly rate of 8%, from the date of his payments to the date of the refund, and pay Mr A £300 for distress and inconvenience.

If Ageas thinks tax should be deducted from the interest, it should tell Mr A what sum has been deducted, so he can reclaim it from HMRC as appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 October 2024.

Susan Ewins
Ombudsman