

The complaint

A limited company, which I will refer to as C, complains about the decision of Arch Insurance (UK) Limited to decline its commercial vehicle insurance claim.

What happened

The following is intended only as a brief summary of events. Additionally, whilst other parties have been involved in the events and correspondence, I have largely just referred to C and Arch for the sake of simplicity.

C operates as a motor trade business and held a commercial insurance policy underwritten by Arch. In November 2023, C purchased two vehicles from an auctioneer. C went to the auction site and picked up the vehicles. They drove these just beyond the auctioneer's property and parked up. C was preparing to load one of the vehicles onto a recovery truck, when the second vehicle was stolen. C said that it noticed someone in the vehicle, before it was quickly driven off.

C contacted Arch to claim for its loss. However, Arch declined the claim. It said that there was evidence that C had been given two sets of keys, and one had been left in the vehicle glovebox. And that the policy excluded claims in these circumstances. Arch also said that the vehicle had likely been left unlocked, which was also an excluded circumstance – as set out in exception 13 of the Loss of or damage to Your Vehicle Sub-Section of C's policy.

C complained about this and brought its complaint to the Financial Ombudsman Service. Our Investigator thought that it was most likely the vehicle had been unlocked with a second key left inside it. So, he thought it was fair and reasonable for Arch to decline the claim. C remained unsatisfied and so its complaint was passed to me for a decision.

I contacted Arch, explaining that I was minded to come to a different outcome to our Investigator. I said I was not entirely persuaded that the circumstances demonstrated that the vehicle had been left unlocked. I pointed out that Arch's own expert report had given an example of how entry into the vehicle could have been achieved even if it were locked. I also said that I was not entirely persuaded it was fair to rely on the exclusion relating to a second key being left in the vehicle, when it hadn't been demonstrated that C was told that there was a second key for this particular vehicle.

I also said that I was minded to reach a decision that, even if the circumstances technically fell within the policy exclusions, it was not fair or reasonable to rely on these to decline the claim. I explained that C had apparently been within a close proximity to the stolen vehicle, and so was in a position to potentially prevent or deter the theft.

I said I was minded to direct Arch to reconsider the claim on the remaining terms of the policy. And also to pay C £200 compensation for the inconvenience caused.

Arch responded, saying that C ought to have known there was likely more than one set of keys, as it had purchased vehicles from the auctioneer on numerous occasions. And that, whilst it might be possible to open a locked vehicle, it was likely in these circumstances that

this vehicle was unlocked. Arch also said that the location of C's vehicles at the time meant that C was likely at least 25 metres away from the stolen vehicle, and referred to a previous decision of the Ombudsman Service where a vehicle had been stolen whilst unattended.

I also contacted C and told them that the above was a potential outcome, and asked for its comments.

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.

Having done so, I am upholding this complaint. I'll explain why.

As I have noted, the above is merely a summary of the circumstances and arguments raised. Both parties have provided detailed correspondence, covering a number of points. However, as befits the informal nature of the Ombudsman Service, I am going to focus on what I consider to be the key issues.

I think that there is a strong possibility that the vehicle was left unlocked and also that there was a second set of keys in the vehicle glove box. That said, there is possible that a thief could have unlocked a locked vehicle, either mechanically or electronically. It is also possible that a thief could have started the vehicle without the key. Arch's expert refers to potential methods for these activities. Fundamentally though, I don't consider I need to make a finding on these issues.

This is because, even if it is accepted that the vehicle was left unlocked, and that there was a second set of keys in the glovebox, I think C was more likely than not within a reasonable proximity of the vehicle when it was stolen. And, whilst it evidently did not happen in these circumstances, I think this proximity would have made the theft less likely and I don't consider it is fair or reasonable for Arch to strictly apply the terms of the policy in the specific circumstances of this case.

Arch has provided an image of the location of the theft, and has said that this demonstrates C was at least 25 metres away from the stolen vehicle at the relevant time. If that was the case, I might be persuaded that Arch's decision was appropriate. However, it seems Arch has come to an incorrect conclusion on the exact location of the vehicle and C.

C has said that on exiting the auctioneer's site, it parked one vehicle on the right, and the stolen vehicle on the left. Arch has seemingly understood this to mean that C proceeded out of the auctioneer's site, fully onto the main highway, parking either side of the junction. However, this does not accord with the information C has provided.

C has said that it parked "just outside the gate" to the auctioneer's site. And that the vehicle "was only parked 6 or 7 steps" from where C was. C has also indicated to the Ombudsman Service that the vehicles were located on the access road leading to the auctioneer's site.

I would point out that this is a very short length of road. However, having looked at images of the road available online, I don't consider it to be unlikely that drivers collecting vehicles from the auctioneer would park in this location. And C's testimony has been consistent on this point. It has said that it parked just outside the gate, and that it was within a few steps of the vehicle. So, I am persuaded that it is more likely than not that the stolen vehicle was parked here. And this location would mean that C was much closer than 25 metres away from the stolen vehicle at the time of the theft.

During the claim process, Arch actually seemed to accept that C was in close proximity to the stolen vehicle. Arch referred specifically to this, in its letter declining the claim, when arguing the vehicle was most likely unlocked.

It also seems that C would have had a clear line of sight from its location to the stolen vehicle. Arch has referred to a previous decision of the Ombudsman Service regarding a vehicle theft. But in the circumstances of that case, the customer was inside a building with no clear line of sight to the vehicle parked outside, which had been left with the thief along with a set of keys. The circumstances here are substantially different.

C was somewhat pre-occupied with other tasks at the time of the theft. But I think the proximity of C to the theft, and the clear line of sight, would have acted to deter or prevent most thefts. So, I do not consider it is fair or reasonable for Arch to rely on the specific exclusions it has to decline the claim – even if I was persuaded these had been breached.

In declining the claim inappropriately, Arch has caused C a level of inconvenience that otherwise would have been avoided. So, I consider Arch should compensate C for this and I consider £200 to be an appropriate award here. As C is a limited company, it is not capable of suffering distress and I am unable to make an award for any distress caused to its directors/employees as they are not the complainant.

Putting things right

Arch Insurance (UK) Limited should also pay C £200 compensation and reassess C's claim on the basis that exception 13 under the Loss of or damage to Your Vehicle Sub-Section of the policy does not apply.

My final decision

My final decision is that I uphold this complaint. Arch Insurance (UK) Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 13 December 2024.

Sam Thomas
Ombudsman