

The complaint

Mr and Mrs G complain that Admiral Insurance (Gibraltar) Limited unfairly declined their motor insurance claim after their car was stolen.

What happened

Mr G held a motor insurance policy underwritten by Admiral. Mrs G was a named driver.

In early 2023, Mr and Mrs G noticed their car had been stolen from the road outside their home. They contacted Admiral to make a claim. As part of its investigation, Admiral arranged for the car keys to be analysed. Mr and Mrs G said that they last used the car the evening before the theft. However, Admiral's key analysis found that the car had been used on the day of the theft, not long before the car was discovered missing. Admiral thought Mr and Mrs G had been deliberately deceptive and knew who took the vehicle, so it declined the claim.

Mr and Mrs G complained. They thought the accusation of fraud was unfair and felt that Admiral was holding against them that they couldn't remember when they'd last used the car. They were also unhappy with how long Admiral had taken to deal with the claim.

Admiral looked into the complaint and upheld it in part. It said the claim had been declined correctly because Mr and Mrs G had failed to account for the car's use on the day of the theft. But Admiral acknowledged that it should have dealt with the claim more quickly and it paid Mr G £100 to recognise this. Mr G obtained legal advice and his solicitor argued that Admiral hadn't shown that Mr and Mrs G had committed fraud. The solicitor also offered possible explanations for the key data, but Admiral didn't change its stance.

Mr and Mrs G referred their complaint to the Financial Ombudsman.

I considered the complaint and didn't think it should be upheld. I issued a provisional decision setting out why.

Mr and Mrs G, via their solicitor, didn't agree with my findings. They said I ought to have considered whether Admiral had shown that fraud had been committed. They said the only evidence Admiral provided to show this is the discrepancy between the key data and Mr and Mrs G's recollection. They reiterated that Mr and Mrs G could have simply forgotten using the car that morning, or the data could be wrong as there were inconsistencies across the key reports. They also said there isn't a link between the key's use and the theft. And they said Admiral didn't put their allegations to Mr and Mrs G during the fraud interview.

Further, they said the automotive security company's information that I'd previously mentioned is based on the manufacturer's own view of the vehicle's security, so isn't reliable. And they shared several industry and media publications to show that keyless theft is sophisticated and increasingly prevalent.

I considered the complaint again in light of the further arguments. I issued another provisional decision upholding the complaint. I said:

"I've given very careful thought to this complaint in light of the further arguments made to me. Having considered the matter again, I've come to a different conclusion. I'm now minded to uphold the complaint. I'll explain why.

Mr and Mrs G said I ought to have determined whether Admiral had shown that fraud had been committed – and I agree. So I've now considered this in full.

Fraud is a serious issue with significant consequences for a policyholder accused of it by an insurer. As such, this service expects an insurer, wanting to rely on an accusation of fraud, to support this with strong evidence. Each complaint about a fraud allegation is taken on its own merits but, in general terms, it's unlikely that merely showing a number of 'discrepancies' or setting out a list of 'concerns' will satisfy that a fair and reasonable allegation of fraud has been made. That is not least because there are two parts to 'fraud'. The first is not being truthful. With the second being that the untruthfulness was put forward by the policyholder with a view to gaining a benefit from the policy that they weren't entitled to receive.

Admiral said Mr and Mrs G's version of events doesn't match the data obtained from the key reports. Admiral doesn't think Mr and Mrs G have given a reasonable explanation for this. As the evidence suggests the key needed to be used in the car to update the key data, Admiral said Mr and Mrs G must have known who took the car and gave the key to the thief. Admiral said Mr and Mrs G deliberately tried to mislead them. It told Mr and Mrs G to repay £375 of claims costs and it has since said that it intends to load fraud markers in relation to the claim.

I'll first address where my opinion hasn't changed. I still think Admiral was entitled to rely on the data in the key reports. I appreciate the mileage discrepancy Mr and Mrs G have pointed out. Admiral has said that this is due to the data being converted from kilometres to miles in the first report but not the second. The first report was produced by a company based in a country that uses kilometres, so I don't find the explanation unreasonable. But both reports give the same date and time for the car's last use which is what I think is important.

I also still think Admiral was entitled to say that the key likely had to be used in the car in order to update the key data. Having been asked about this, one key company said:

"My understanding is the key will only update when in use with the car and the same driving cycle with all [of the make of Mr G's car] applies.. ie start car – key updated, updated every 20km or when the car stops and ignition turned off."

...

"Basically key would have to be in car and used to update is my understanding without any other issues not mentioned"

Mr and Mrs G have questioned the strength of this evidence. But I think it's reasonably clear. It was provided by the key company's general manager, and I've seen no other expert evidence to challenge it.

So, the key data suggests the car was used later than Mr and Mrs G said in their testimony. I accept that this is a discrepancy. The use was also two or three hours before the car was discovered stolen. So, I understand why Admiral was concerned. But, where my opinion has changed, is that Admiral has not provided any supporting evidence to show that this discrepancy was related to the theft or that Mr and Mrs G knowingly lied. Instead, Admiral has selected one possible explanation which was that Mr and Mrs G were knowingly complicit in the theft. This is a very serious allegation, and I would expect to see additional evidence to support it, but Admiral hasn't provided this.

I previously thought Mr and Mrs G would have remembered using the car that day. But having considered the matter again, it could reasonably be that one or other of them inadvertently forgot. It isn't uncommon for memory to be affected during stressful situations. In any case, I accept that Mr and Mrs G haven't been able to explain the key data. But Admiral has not shown that Mr and Mrs G knowingly gave false testimony. Admiral has not presented any other discrepancies or concerns – and I note that the fraud investigators found no additional concerns with Mr and Mrs G's testimony or demeanour.

The only discrepancy that Admiral has relied on is the key data. But Admiral chose not to put this to Mr and Mrs G during its fraud interview despite it being known at the time. I think Admiral missed an opportunity to properly explore how the data sits with Mr and Mrs G's testimony. By not raising it, Admiral deprived itself and Mr and Mrs G of a possible opportunity to validate the claim one way or the other. Raising the issue in early February rather than late April could have helped Mr and Mrs G to remember any use of the car that day. And raising it in an interview setting could have allowed the fraud investigators to observe Mr and Mrs G's initial reactions, to ask follow-up questions, and to provide comment. Instead, Admiral informed Mr and Mrs G of its findings via letter three months after the theft.

So, whether or not the testimony Mr and Mrs G gave was false, I'm not persuaded that Admiral has shown that Mr and Mrs G knew it to be false and gave it anyway, which is a critical part of a fair and reasonable fraud allegation.

This brings me to the second part of the fraud test. Even if Admiral could show that Mr and Mrs G knew they'd given false testimony, Admiral would also need to show that Mr and Mrs G did so to gain a benefit to which they were not entitled. From Admiral's repudiation letter, it would seem it thinks this 'benefit' would be that Mr and Mrs G gave the key to the thief which would not be covered under the insurance policy. But I haven't seen any evidence to show that a key was used to steal the car, or any evidence showing how the theft occurred at all.

Admiral has said it doesn't think the car could have been taken by relay theft as Mr and Mrs G said the key was usually kept towards the back of the property which is quite far from the road. But I can't see that Admiral has sought expert opinion on the layout or circumstances of the theft to rule this out. I don't think the key being at the back of the property is enough to say that relay theft wasn't a possibility. I say this because, as I understand it, what's important is not whether the key is close to the vehicle but whether a thief can position themselves close to the key and relay the key's signal to the vehicle.

I said in my previous findings that while keyless theft was a possibility I didn't think it was likely as the evidence suggested the key had to be used in the car to update the key data. But I no longer think it's fair to connect the key data with the theft in the absence of any supporting evidence. It could reasonably be that the key data is unrelated to the theft. Given the information Mr and Mrs G have shared about the growing prominence and sophistication of relay theft, which is a view consistent with this service, and without any supporting evidence from Admiral, I don't think relay theft, or other kinds of theft, can be ruled out. And I don't think it was fair for Admiral to conclude that the only means by which the car could reasonably have been stolen was with Mr and Mrs G's key.

I should add that neither Mr and Mrs G nor Admiral have to show how the car was stolen. What's important is whether Admiral has shown it's most likely that fraud has occurred. I don't think Admiral has done that. So it's going to have to remove any fraud markers from its own and industry databases.

Further, Admiral has not put forward any other clear reasons why it thinks the claim should fail. Admiral's fraud condition says that if Mr and Mrs G provide false information, it has the

right to decline the claim. But I don't think it would be fair and reasonable for Admiral to rely on this without showing clear evidence of fraud and that Mr and Mrs G knowingly lied. I've explained above why I'm not persuaded that Admiral has shown this. Admiral also appears to have completed its claim investigation and I can't see any significant avenues it would still need to explore. So, I'm intending to tell Admiral to settle the claim in line with the remaining policy terms, with interest.

If Admiral voided the policy, it should remove all records of the voidance from its own and industry databases. If Admiral cancelled the policy, it should remove all records of an enforced cancellation. It should amend its records to show the policy as having lapsed after the settlement of a claim. If Mr and Mrs G repaid Admiral its £375 of claims cost, Admiral should refund this, with interest.

Admiral has admitted to delays, and I'm satisfied the £100 it paid for this is fair. However, as I think the claim ought to have been paid, and as Admiral has admitted to delaying the outcome, I think it's fair that Admiral covers Mr and Mrs G's reasonable travel costs while they were without their settlement.

I've considered when I think Admiral ought to have completed its investigations. The last piece of information that I can see Admiral received was from the key company on 29 March 2023. But I think there were earlier delays. For example, Admiral only wrote to the key company on 22 March, but their report was dated 9 February. So, I think Admiral could have reviewed this and asked follow-up questions sooner. Looking at the matter as a whole, and allowing Admiral a reasonable amount of processing time, I think it ought to have completed its claim investigations around three weeks earlier – so, by 1 April 2023. If Admiral disagrees with my timeline here, it should of course let me know in its response.

Mr and Mrs G have said they didn't have access to another car. They said they purchased a replacement on 8 June following Admiral's final response letter, when it became clear that Admiral was not going to change its stance and they'd need to take the matter further. I think this was reasonable. Mr G has provided his bank statement showing taxi and train costs which total £567.49 between the above dates. I don't think these costs are unreasonable for a two-month period where Mr and Mrs G live. So, I think Admiral should reimburse these costs, with interest.

Finally, Mr and Mrs G understandably felt frustrated and humiliated to be accused of fraud. Admiral will be aware that Mr G is employed in a senior position in a regulated industry. He's explained how worried he's been about his work and his reputation because of the allegation. Taking everything into consideration, I think it's fair for Admiral to pay Mr and Mrs G an additional £500 compensation to reflect the trouble and upset caused by the fraud allegation and the declined claim."

Responses

Mr G said he was happy with my provisional findings but asked me to consider two points. First, he asked if I would apply a deadline to my order for Admiral to pay the claim. Second, he asked if I would be prepared to consider adding an award for his legal costs. He provided evidence of the costs he has incurred to date. He said he understand our service does not usually award legal costs. But he felt the nature of the issues in this complaint are such that it could fairly be said that he had no option other than to incur legal costs.

Admiral did not respond to my provisional decision.

Now that the deadline I set for responses has passed, I consider it appropriate to issue my final 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.

As Mr and Mrs G broadly accept my provisional decision, and Admiral hasn't provided further comments or evidence, I see no reason to change my overall outcome.

I've considered the points Mr G has raised about my proposed redress. Regarding the deadline to settle the claim, I understand Mr G would like Admiral to pay the claim as quickly as possible. I recognise that it's been a long time. Unfortunately, I'm unable to make Admiral pay the claim by a certain date. But we usually expect financial businesses to settle complaints in line with our awards within 28 days. I'm also ordering Admiral to pay 8% interest on any cash amounts until it settles the matter. This would compensate Mr and Mrs G for any delays and it means it's in Admiral's best interest to deal with the claim promptly.

Regarding Mr G's legal costs, I didn't think this would be appropriate to award so it wasn't set out in my provisional redress. But I do appreciate Mr G's costs are significant and he has no doubt been assisted by his solicitor. I should explain that the power for me to award costs is set out in the rules that govern our procedures. The guidance to the relevant rule is set out in the Financial Conduct Authority's handbook (DISP 3.7.10) which states:

“In most cases complainants should not need to have professional advisers to bring complaints to the Financial Ombudsman Service, so awards of costs are unlikely to be common”.

I appreciate this guidance talks about costs involved in bringing a complaint to our service. But equally policyholders shouldn't ordinarily need professional advisers to make a claim to their insurer. If professional fees are, in the ombudsman's view, necessary for the policyholder to incur in bringing a complaint or making a claim then I can, in upholding a complaint, require an insurer to pay these where fair and reasonable to do so. But this is very rare.

I've thought about what Mr G has said about his legal costs. I recognise the issue of fraud is very serious and could have legal and professional consequences. But I'm not persuaded that Mr G couldn't have made the complaint to Admiral or referred it to our service without legal assistance. So, it wouldn't be fair for me to make an award for this.

I've reviewed the complaint again and my opinion hasn't changed. So, my provisional decision, and my comments here, are now the findings of this, my final decision. I order Admiral to do as I've set out below.

Putting things right

To resolve this complaint, Admiral must:

- Settle the claim in line with the remaining policy terms. Add interest* to this from 1 April 2023 to the date of settlement.
- Remove all fraud markers from internal and external databases, as applicable.

- Remove any record of policy avoidance from internal and external databases, as applicable.
- Remove any record of enforced cancellation from internal and external databases and update the same to show the policy as having lapsed after settlement of a claim.
- Refund Mr and Mrs G the £375 of claim costs if they repaid this amount. Add interest* to this from the date repaid to the date of settlement.
- Pay Mr and Mrs G £567.49 for their reasonable travel expenses between 1 April and 8 June 2023. Add interest* to this from 8 June 2023 to the date of settlement.
- Pay Mr and Mrs G an additional £500 compensation for distress and inconvenience.

* Interest should be paid at 8% simple per year calculated from and to the dates shown. If Admiral considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs G how much it's taken off. It should also give Mr and Mrs G a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've given, I uphold Mr and Mrs G's complaint and direct Admiral Insurance (Gibraltar) Limited to do as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 6 December 2024.

Chris Woolaway
Ombudsman