

The complaint

Mr and Mrs G have complained that Accredited Insurance (Europe) Ltd (AIE) unfairly and unreasonably refused to pay their claim for the theft of their car under their motor policy because it believed the car had been left unlocked.

Mr G is the policyholder here and although Mrs G has been our main contact, I shall just mainly refer to Mr G, solely for ease of reference. No dismissal of Mrs G's involvement with both AIE and us is intended by this whatsoever, please note.

What happened

On the evening of 23 November 2023, Mr and Mrs G's car was stolen from outside their house. They said they saw it happen. There were four thieves all wearing balaclavas, two in Mrs and Mrs G's car and two in a support car. Mr and Mrs G and their family followed the thieves and almost caught up with them before they all sped off again, leaving some debris from the inside of the stolen car (such as the tracker etc) on the roadway. It was duly reported to the police and AIE and they said it was a very distressing experience.

Mr G said that he has CCTV protecting his house and property. He said in order to prove the theft, as in his car was stolen, he showed a clip of the relevant CCTV detailing the theft to both the police and AIE.

However, AIE decided the CCTV merely showed the car was unlocked when it was stolen. As the policy states the car must be locked in order for a theft claim to be accepted, AIE declined to pay Mr G's claim.

Mr and Mrs G are very aggrieved because they say AIE didn't consider all of the evidence around the theft and the possibilities as to how it was stolen. They remain utterly convinced it was not the case that the car (last used by Mrs G) was left unlocked as she is so careful about locking everything as a matter of course. Further if AIE needed further evidence as to how the car was stolen it should have told them before the relevant CCTV was wiped to be used again in the normal way.

So, they brought their complaint to us. The investigator thought it should be upheld. She agreed with Mr G's interpretation of the evidence which was showing one of the thieves picking up something from another car's bonnet, which could indicate some other method was used to unlock the car doors before the thieves got into the car and drove away. She thought AIE should reconsider the claim under the remaining terms and conditions of the policy, and if the claim was accepted it should pay Mr G's finance company first paying any balance to him with interest. AIE should also pay other reasonable costs on Mr G providing evidence, again with interest. And it should pay them £500 compensation.

Mr G accepted the investigator's view. Mr G said they have already paid off the finance company as it wouldn't stop the agreement on the basis AIE said the car was a total loss as it hasn't been recovered. So, Mr G had to use up some other savings or take out another

type of loan to pay off the finance company. In any event, the finance company no longer has any interest here.

There have been varying accounts of what type of methods could have been used to steal this car and on receiving evidence that the key fob didn't have a 'walk away' function AIE didn't accept the investigator's view and it asked for an ombudsman's decision. Therefore, Mr and Mrs G's complaint has been passed to me to decide.

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'm upholding this complaint along the same lines as the investigator. I'll now explain why.

In order to deal effectively with this case, I shall do it under several headings.

What the CCTV shows

It shows two thieves coming to the car that was stolen, with both of them going across the front of the car. One goes to the driver's door who I shall call A and the other one, who I shall call B, marches straight past the front of the car that is stolen going first to the other car which was parked beside the car that was stolen. Something is either picked up off the bonnet of this other car by B or indeed possibly left there. It seems more likely something was picked up as we can see B then put something in his pocket as he goes to the passenger door of the car that was stolen. As B is walking by the front of the car again, he looks at the number plate as if he's checking it or even possibly confirming he is stealing the right car too.

Then it shows A easily opening the driver door of the car that was stolen with little hesitation at all. This doesn't just show the door was unlocked though, to me it could also show A knew very well that the door was unlocked. However, when B gets to the passenger door of the stolen car, we can see he didn't or couldn't open it. He was waiting more than anyone would normally if they knew the car was unlocked, there's a distinct hesitation. Whilst he was waiting A was still fiddling under the steering wheel or the bottom of the driver's seat. Then B opens the passenger door and turns off the internal light. He doesn't get in and sit down but instead leans over the passenger seat with his feet still on the ground with something clearly in his hand which he either is giving to A or is inserting it into something in the car.

Then B gets up from doing this and goes to shut the passenger door, walking towards the back of the car. I think he was intending to go around the back of the car to the driver's door. But B then comes back to the passenger door, opens it, and leans in and A then comes up from fiddling with something under the steering wheel or on the floor near the driver's seat.

Then they are both fiddling with something at the steering wheel height of the dashboard and then the head lights come on. I'm assuming the car got started then. As B sits down in the passenger seat and shuts the door and A proceeds to manoeuvre the car to drive it away. So, looking at this video I can see clearly that A knew the driver's door was open at least. I don't however think it was clear that B thought the same as why did he have to wait to open the passenger door like he did? That wouldn't make sense surely in the act of stealing a car, he would want to get into the car as quickly as possible to get it started and then get away. It also clearly shows me that it's entirely possible only one door was open not the whole car.

So, if Mrs G or whoever was the last person to use the car left it unlocked, I'm assuming more than just the driver's door would be left open too, one could get into the passenger side door, the rear doors and even possibly the boot too. So why would B not just open the passenger door immediately? It doesn't seem likely to me that someone would hesitate like B did here when he's in the process of stealing the car.

So, I'm not sure this video does actually conclusively show the car as open as AIE thinks. I think it merely confirms the driver's door was already open and that A was fully aware of that. However, it also shows more importantly and very possibly too, that the passenger door wasn't actually unlocked and needed to be unlocked by whatever A was also doing under the steering wheel or by the bottom of the driver's seat and that B also knew this given he waited like he did. Certainly, it's possible that an unlocking function on a key fob for example doesn't always unlock all the doors, depending on how it's used. It happens to me on my car which is not the same make and model that Mr G has.

Therefore, I don't consider this CCTV footage permits AIE to conclude reasonably that the car was certainly left just unlocked by either Mrs G or Mr G. I think it's entirely possible too on balance that it was unlocked in some fashion remotely before this CCTV footage starts. Which is Mr G's main point. I'll discuss the importance of this point later below.

Did a theft occur?

There is no dispute here that thieves in balaclavas stole this car on the basis of the CCTV evidence. AIE clearly confirms this in its correspondence with Mr G.

I also consider it wholly unlikely given Mr G's evidence that Mr G or anyone he knew was at all involved in the theft. This is because Mr G's evidence is that he and some family members gave chase almost catching up with the thieves too.

What the policy says about claiming for theft of your car

Under 'what to do when reporting a claim' it says:

'Following an accident or to report any other loss under the policy you should call Lawshield UK Ltd. Our claims helpline on 0333 043 3787.'

...

'If the loss is as a result of theft, attempted theft, vandalism or malicious damage, you should also notify the police and obtain a crime reference number.'

Under 'If your vehicle is stolen, vandalised or damaged in a riot' it says:

- *'Tell the Police as soon as you discover the loss and make a note of the crime reference number and station concerned.'*
- *'In the event of theft, there will be a period of time during which the Police will try to find your vehicle. We will commence claims investigations immediately, but if your vehicle is not recovered within a reasonable period, or your vehicle is recovered damaged, we will consider settlement of your claim on the basis described in Section 1 - Loss or Damage to your Car.'*

Under 'Section 1 – Damage to or loss of your vehicle' (worded differently than what the above says too) and under 'what you are covered for' and under 'Loss or damage' it says:

'd) theft or attempted theft.'

Under 'what you are not covered for' and the heading 'Unsecured vehicle' it says:

'Loss or damage from theft or attempted theft where:

- a) all locks have not been engaged;*
- b) any windows have been left open;*
- c) the immobiliser is either not working or not been activated;*
- d) the keys have been left in or on your vehicle.'*

So clearly if the car was simply unlocked on the drive, then in line with almost every other motor policy, AIE excludes theft cover if it is a fact that the car is left unlocked.

This is a standard exclusion across almost all of the motor insurance industry and I don't find it unusual. However, it is a significant exclusion so I would expect it to be brought to any policyholder's attention in the Insurance Product Information Document (IPID).

It doesn't appear that AIE's file which it disclosed to us, has any IPID in line with the Financial Conduct Authority's regulation on the matter. So it could be that this significant exclusion wasn't properly brought to Mr G's attention in any event. I shall deal with the importance of this point later below.

Evidence of the security this car had

AIE's key expert explained initially in their report that the keys to Mr G's car have ultra-wide-ban technology. This level of technology is supposed to ensure that a theft then can't occur in what is called the 'relay-attack' method. AIE said this meant the keys couldn't *'emit a signal that can be detected by such devices so they cannot be stolen by this method.'*

However, Mr G talked to the main manufacturers of his make of car and was told in writing that the key doesn't have this ultra-wide-ban technology as AIE key's expert says. AIE merely says in its final response that *'you have been given incorrect information. The vehicle is therefore not vulnerable to the traditional 'relay' theft method.'* But it didn't get confirmation from the same main manufacturers that what Mr G was told actually was wrong. Why would the main manufacturer be wrong, and the key expert paid by AIE for its services be right simply on this basis.

In the same vein AIE key's expert said that this car didn't have the walk away locking feature which would be relevant to varying forms of theft. However, the main manufacturer told Mr G in writing it did have this feature.

I obviously am not a car security expert and certainly not an expert on this make and model of car either. But I consider here it was for AIE to show properly that possibly the main manufacturer Mr G was talking to, was wrong, if indeed it was, not just leave the evidence in a somewhat uncertain state as this. After all, the onus of proof to show its stance on the claim is correct rests on AIE. There is little onus of proof here on Mr G since he proved the theft occurred clearly and AIE confirm this.

Is it the duty of the policyholder to prove how the theft occurred given the case investigations issues by AIE?

The policy doesn't impose any duty on the policyholder to prove how the theft occurred, merely that a theft did occur. Mr G did this and there is no dispute about this.

AIE is of the view that because it thinks wrongly in my view that the CCTV shows Mr G's car was left unlocked and further left unlocked crucially by Mr G, Mrs G or whoever last legitimately used the car only, that Mr G then has the onus of proof to show he did lock it.

However, Mr G rightly says if AIE had raised this burden of proof on him earlier in the proceedings he could have gone over the CCTV footage and found the evidence that the car had been properly locked by Mrs G in the first place and possibly have shown when thieves had somehow unlocked it by whatever method they used. But because they raised this so

late in time, the CCTV had wiped itself to be reused again, so he had no chance to find this evidence at all. He thought he simply had to prove the car was actually stolen so that was the only evidence he was looking for at the time. Mr G first gave the CCTV footage to AIE on 6 December 2023 and then again on 17 January 2024.

I'm much persuaded by this, as it's clear from the outset given the CCTV evidence clearly showing the theft had occurred that AIE were at that stage then dealing with the claim on the basis of a possible total loss and to pay Mr G the market value of his car. This is because of the content of its communications with Mr G up to this time on its file.

It wasn't until 5 February that AIE decided to say the car was unlocked and more crucially left unlocked by the last person to use it legitimately and the policy therefore couldn't cover this claim. That was simply too late for Mr G to go back to the CCTV footage to find the evidence required as whether it was locked and that its lights flashed and the mirrors folded in (or whatever the actual process was) as expected after Mrs G used it, or whether somewhere between she locking the car and the CCTV footage showing the thieves opening it, or the thieves possibly unlocking it remotely.

If it was the case that AIE raised this from the outset and therefore had permitted Mr G to look over the CCTV footage again which then didn't show anything happening to the car either by being locked by Mrs G or being remotely unlocked by the thieves, then I would have to say Mr G's burden to show the car was indeed locked might not have been met and the argument over what security this car had or didn't have might have been much more relevant.

Further and very importantly, as the investigator explained in her view, AIE's delay meant Mr G could no longer get any activity report from the main manufacturer which would have been another key piece of evidence which would have shown every interaction with the car, to include doors opening, locks locking and unlocking, windows going up and down, engine going on and off in the app this car had. As the app logs all these activities against a time and date. Mr G tried to obtain this evidence but was told by the main manufacturer it was no longer available as it is only stored for three months.

So, I consider it's not fair and reasonable to raise that burden on Mr G too late for any CCTV or app evidence to remain available. It's not fair that AIE raises such a burden so late in the day so that it can turn its own tardiness and its lack of thoughts about the claim earlier to its own advantage here. So given AIE raised this burden of proof on Mr G so late means it can't then rely on the lack of evidence, due to its own delay in asking for such evidence. As I explained above the CCTV footage, we do have of the theft doesn't categorically show all the doors being apparently unlocked either. It's not actually definitive enough evidence to show that Mrs G or whoever last used the car legitimately *left* the car unlocked.

After all, only over the last day or two it was reported in one of the UK newspapers that (as the newspaper described it) 'an unstealable' extremely high-end model of the type of car Mr G's car was stolen outside the owner's house merely two days after it was picked up from the dealership to know that car theft remains something of a significant issue. It appears in that case it's not yet known how the thieves stole it, but it only took them 15 minutes to do so. Obviously, there is no report on whether it was locked or left open, but the fact remains vehicle theft and to order too, remains a significant problem and that thieves appear well ahead of the car manufacturers and indeed insurers on how to steal them regardless of what security details any car might have. And it's neither Mr G's role nor indeed my role to decide what method precisely, the thieves used to steal the car, given there is simply no question on the CCTV evidence that we have that the thieves certainly stole this car.

Conclusion

This has been a very difficult case more because of the way AIE's argument developed in order to decline the claim.

It was very delayed which meant that I consider it's reasonable to conclude Mr and Mrs G effectively lost the chance of retaining all of the relevant CCTV and app evidence which might have helped them and indeed AIE on how the theft occurred. Instead, how the theft occurred is now left to quite a lot of conjecture. Plus, it's not clear from the contents of the file that AIE disclosed to us whether the IPID detailed the significant exclusion over unlocked cars either.

I consider it was understandable that Mr and Mrs G wouldn't have known it was for them to prove additionally 'how' the theft occurred at the time the extent of CCTV footage was chosen. And they didn't know at that time or indeed in time, that AIE would take the view that as the car is clearly unlocked in the CCTV footage, it would mean they would be held responsible for that. And not that the thieves had somehow been able to open a locked car too as well as drive it away without an operational key fob being at least near the car. Their conclusions on the issue of the car being unlocked somehow by the thieves is reasonable too given the media reporting on car theft just generally these days. So, it wasn't an unreasonable view for Mr G to have taken in my opinion.

Given AIE's delay in raising the 'unlocked car' issue, it also means it's unfair of it to rely on its tardiness to getting relevant evidence preserved by Mr G to include the app evidence somehow means Mr G isn't discharging his burden of proof on whether the car was locked or not. Indeed, some of AIE's tone in its correspondence with Mr and Mrs G over this issue was unsavoury and unnecessary too.

Therefore, I consider AIE should pay this claim subject to the remaining terms and conditions of the policy with interest from 1 January 2024 being enough time since the 23 November 2023 for the police to have found Mr G's car and for AIE to consider paying this claim also. Mr G has told us that he paid off the finance company himself on 1 July 2024. Therefore, the finance company no longer has any interest in this car or its market value. Mr G hasn't detailed any specific extra costs here, but it is possible the interest awarded on the market value of his car wouldn't cover the extra interest charged by the finance company too. If it isn't covered then I consider it a 'reasonable expense' as detailed by the investigator that AIE should pay this consequent loss to Mr G.

Compensation

I have carefully read all of Mr and Mrs G's testimony, letters, emails, statements, and their account of their efforts to prove their claim was legitimate. I can see throughout all of that the level of distress and upset AIE's delayed denial of their claim caused them.

I can also see the significant efforts they went to in order to obtain the evidence required once they understood AIE were deciding not to pay this claim. I must commend them on their efforts too.

There was no loss of use as Mr G had other cars to use so he hasn't been left without any car to drive.

On that basis AIE caused them a significant level of distress and upset. I consider the figure of £500 as suggested by the investigator to be fair and reasonable and in line with our approach to compensation, which is more fully detailed on our website.

My final decision

So, for these reasons it's my final decision that I uphold this complaint.

I now require Accredited Insurance (Europe) Ltd to do the following:

- Pay Mr and Mrs G the market value of their car subject to the remaining terms and conditions of the policy.
- Interest of 8% simple per year should be added from 1 January 2024 to the date it pays them the market value.
- If it is a question that this interest award doesn't cover the extent of the interest charged to Mr and Mrs G on the finance agreement up to 1 July 2024 when they discharged it, then on proof of this from Mr and Mrs G, it should refund that extra loss also.
- If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr G for HMRC purposes.
- Pay Mr and Mrs G the sum of £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 25 February 2025.

Rona Doyle
Ombudsman