

The complaint

Mr S has complained about Aviva Insurance Limited. He isn't happy that it declined his claim under his motor insurance policy following the theft of his car.

A representative has supported Mr S in bringing this complaint, but for simplicity I've mainly referred to him in this decision.

What happened

I looked at this case and provided my initial thoughts in my provisional decision as follows -

Mr S' prestigious car was stolen from his home address in March 2023 and so he made a claim under his insurance policy. But Aviva turned down the claim as he didn't have an active tracker on his car which was a requirement of his insurance policy. He complained to Aviva about this as he didn't feel the decline was fair or that it had brought the endorsement to his attention.

When he complained to Aviva it said that as the endorsement requiring an active tracker wasn't adhered to at the time of the theft it maintained its position. But as Mr S remained unhappy he complained to this Service.

Our Investigator looked into things for Mr S but didn't uphold his complaint. Although she could understand Mr S' position she didn't think Aviva had done anything wrong in declining the claim. This was because Mr S didn't have an active tracker on his expensive car at the time of the theft, which was a requirement of the policy. And she thought that the endorsement and need to have a tracker had adequately been brought to Mr S' attention.

As Mr S didn't agree the matter has been passed to me for review.

What I've provisionally 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 have a great deal of sympathy for the position Mr S has found himself as he has been the victim of crime and his expensive car has been stolen. But I agree that Aviva hasn't acted unreasonably in turning down the claim in line with the endorsement on the policy. And so, I'm presently minded not to uphold his complaint, I'll explain why.

I'd like to reassure Mr S that whilst I'm aware I may have condensed some of the complaint points in far less detail and in my own words, I've read and considered everything he's told this Service. I'm satisfied I've captured the essence of the complaint and I don't need to comment on every point individually, or possibly in the level of detail he would like, in order to reach what I think is a fair outcome. This isn't meant as a discourtesy, but it simply reflects the informal nature of our service. And I have of course taken account of the relevant law and guidance when reaching my decision.

Aviva has relied on an endorsement under the policy in declining the claim which says under 'Tracker Requirement (Specific)' that 'you must ensure that a Thatcham approved Category 5 vehicle tracking system is: Installed on the vehicle and in operation at the time of loss Maintained under a maintenance contract with the manufacturer or other reputable organisation and all relevant subscriptions in respect of such tracking systems are fully paid.

We shall have no liability under this policy for theft or attempted theft of the insured vehicle if you fail to comply with this precaution.'

Insurers often use these kinds of endorsements on prestigious cars like Mr S' as the risk of theft is high and the car is so expensive. And I don't think applying endorsements like this is unreasonable or unfair.

Mr S' representative feels that non-compliance with the term, not having an active tracker, didn't have any impact on the claim in any event. And it didn't reduce the possibility of the car being stolen. This was because he feels the car was most likely stolen by an organised gang who stole a number of vehicles around that time and so the car would have been stolen anyway. And so, the representative felt the existence of a tracker on the car neither increased nor decreased the risk of it being stolen as it would always have been stolen by the thieves in any event and the tracker removed very quickly. They maintained that an active tracker didn't reduce the possibility of the car being stolen.

I accept that the car may have been stolen by an organised gang, and it is possible that the car would have been stolen anyway. But an active tracker would clearly have been a deterrent and at the very least delayed the criminals who stole the car. And it is possible that the car could have been tracked and even recovered if the tracker was active which is the purpose of having a tracker in the first place.

So, although I accept that the car could have been stolen anyway and the tracker removed at some point after the theft it is clear that the fitting of an active tracker acts both as a deterrent and gives Mr S and the authorities a greater chance of recovering the car. And ultimately, I can't be sure how quickly the tracker would have been traced and removed, if at all.

The endorsement is clear that the car isn't insured if it doesn't have a tracker. Mr S was fully aware of this the year before and had an appropriate tracker in place. Unfortunately, he wasn't made aware that there was a yearly subscription required to keep the tracker live. I have a great deal of sympathy for Mr S here as he should have been made aware of this, but the onus was on him to ensure an appropriate tracker was in place. And as the tracker wasn't in place Aviva can decline the claim in line with the endorsement.

Turning to whether Mr S was made aware of the endorsement or not, I accept that this is an onerous condition as he wouldn't be covered if a tracker wasn't in place. I know Mr S feels that this should have been highlighted more clearly than it was when his policy renewed and was placed with Aviva, but it was clearly outlined in the policy documentation. And, importantly in this case, Mr S was certainly aware the year before of the requirement to have an active tracker on the car, although I accept that was with a different insurer. However, I would expect Mr S to check his policy documentation and any endorsement, especially for a very high value car like his.

But even if I was satisfied that Aviva didn't do enough to make Mr S aware of the endorsement when it took over cover for the policy I still don't think Mr S would have acted differently. I say this as it is accepted that Mr S knew that he required a tracker and ensured one was in place the year before and I don't know why he would expect this requirement to change unless he was specifically told otherwise. And when Mr S took out a policy the year before knowing he required a tracker he was satisfied that the tracker was in place and believed this was for a sustained period. Unfortunately, this wasn't the case, and he wasn't aware that there was a yearly subscription required but I can't hold Aviva responsible for this.

So, even if I was to accept that Mr S wasn't made aware of the endorsement at the time he took out the second policy (and I think Aviva did enough here and any complaint against the broker has been advanced separately) I don't think he would have acted differently in any event. I say this as Mr S presumed his tracker was live when unfortunately, it wasn't. I

understand that he was misadvised here, but he thought he had a tracker in place which is why he thought he was insured if his car was stolen, when in fact he wasn't.

I know that Mr S' representative has said that where the Tracker requirement wasn't specifically raised that the average consumer would not know it applied. And doesn't feel that it would be fair to rely on the fact that he was clearly advised of this requirement the year before. However, as I've already said I think it was outlined in the policy documentation and Mr S was on notice of this requirement the year before. And as he presumed it was live at the time of renewal I don't think he would have acted differently in any event as he thought the tracker was live.

Given all of this, I'm presently minded not to uphold Mr S' complaint as I don't think Aviva has acted unfairly in declining Mr S' claim.

Replies

Aviva acknowledged receipt of my provisional decision. While Mr S' representative replied in detail but, in the main, they reiterated the position outlined previously although they elaborated further on Mr S' behalf. They said again that Mr S' non-compliance with the tracker requirement of the policy had no effect on the subsequent theft of his car.

Mr S pointed to the fact that the police had highlighted that expensive cars such as his had been stolen in the area by an organised gang of thieves. And said that such a sophisticated gang would be skilled in removing the tracker and/or rendering it inoperative shortly after the theft.

As such it was felt that as Mr S' car would have been stolen anyway that Aviva could not rely on the tracker clause in the contract as it followed '*...that non-compliance with the tracker requirement cannot have increased the risk of the theft*' and an active tracker would not have been a deterrent. Plus, Mr S' car was fitted with a standard alarm and immobiliser so the tracker would not have had any additional effect beyond these security measures.

Mr S' went on to question whether an active tracker would have delayed the criminals who stole the car or have impacted the theft. This is because Mr S would not have been aware of the theft until after it was stolen, and the car would have been stolen in any event providing a timeline of events. And said that even if an operative tracker '*...might have increased the chances of recovering the Vehicle (which is strongly refuted)*...' it didn't stop or decrease '*...the risk of the kind of theft which eventuated*'.

Mr S went on to say again that the steps taken to bring the clause to his attention were inadequate when he took out the second policy, maintaining the requirement was '*...buried in a slew of generic policy documentation*.' Highlighting the stark contrast between the way in which the tracker was brought to Mr S' attention the year before. And had this been highlighted to him in the same vein as the first policy then he would have been proactive in ensuring the onerous tracker condition was met. Mr S disagreed with any suggestion that he wouldn't have acted differently had these steps been taken when the second policy was taken out.

So, although it is accepted that Mr S may have had no reason to doubt that the tracker was in full operation, Mr S doesn't feel it follows that he would have just accepted this had the tracker requirement have been brought to his attention on the second occasion. Mr S maintained that the requirement wasn't brought to his attention upon renewal of the policy and that he would have taken steps to check the tracker was active if this was highlighted to him.

Finally, Mr S reiterated that his car was stolen and despite taking out insurance and paying premiums he has been left without anything by way of compensation and has suffered significant losses. And feels that the provisional decision should be reversed.

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 again considered all the evidence provided by both sides and the further representations made by Mr S I maintain that this complaint should be upheld. I'll explain why.

I don't propose to go over Mr S' further representations in detail as the representations put forward have, in the main, already been made and considered as part of my provisional decision. Although, I will elaborate and comment on some of the points made. And I'll just reiterate that I have of course taken account of the relevant law and guidance when reaching my decision.

I know Mr S feels the tracker wasn't clearly brought to his attention upon the renewal of his second policy which covers the time of theft. But as I've already said I think the clause is outlined in the policy documentation and there is an onus on a consumer to consider and check their policy to ensure they understand their cover. And what isn't disputed is that the clause was clearly brought to Mr S' attention the year before and so he was fully aware of the requirement.

Plus, I know it is possible that Mr S may have rechecked whether his tracker was active upon renewal but as he was told the tracker was active and didn't expect it to lapse, I'm not persuaded by this. He was misadvised about the need to have a yearly subscription in order to keep the tracker active, and he simply wasn't aware of this so I don't think he would have acted differently as he clearly thought there was an active tracker in place.

Furthermore, I've considered the further representations made and I remain of the view that the tracker was a possible deterrent and would, at the very least, have delayed the thieves or, as Mr S accepts, would have increased the possibility of recovering Mr S' car. I can understand why insurers want to place such clauses in policies for very high value vehicles in an attempt to mitigate the possibility of theft and to look to recover the vehicle which would also act as a deterrent to a potential thief.

So, although I accept that these kinds of very expensive cars can be targeted by sophisticated gangs, I can't be sure that Mr S' car would have been stolen if the tracker was in place. And the increased time in tracing the tracker would have increased the likelihood of being disturbed and the fact the car could be traced and recovered would limit the insurers loss here and would be an extra deterrent to a potential thief.

Given all of this I don't think I can uphold this complaint. I know Mr S' car was stolen, and he has been the victim of crime here and I have a great deal of sympathy for the position he has found himself. But I have to be fair to both sides here and I don't think Aviva has acted unreasonably in relying on its policy clause in turning down Mr S' claim.

My final decision

It follows, for the reasons given above, that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 27 February 2025.

Colin Keegan
Ombudsman