

The complaint

Ms P complains that AXA Insurance UK Plc (“AXA”) should pay her claim on a motor insurance policy.

What happened

The subject matter of the insurance, the claim and the complaint is a sports utility vehicle, first registered in 2013.

For the year from March 2023, Ms P had the car insured on a comprehensive policy with AXA.

AXA’s policy terms included the following:

“Section B - Fire and theft

...

What is not covered under this section

...

5. Loss of or damage to your car and its contents due to deception or fraud.

...

10. Loss of or damage to your car if, at the time of the incident, it was under the custody or control of anyone with your permission who is not covered under this policy.”

I will refer to those terms as “exclusion 5” and “exclusion 10”.

The policy covered Ms P to drive the car. The policy didn’t cover anyone else to drive the car.

Unfortunately, Ms P reported to police that on the Saturday night of 2 December 2023 or the following day, someone had stolen the car.

Ms P made a claim to AXA. AXA declined the claim, saying that Ms P had allowed an acquaintance to drive the car although the policy didn’t cover him. AXA also said that the acquaintance may have deceived her into letting him take the car.

On about 19 January 2024, police located the car, burnt out.

Ms P complained to AXA that it should pay her claim. She also complained to AXA that it hadn’t called her back.

By a final response dated 26 April 2024, AXA turned down the complaint that it should pay the claim. AXA referred to exclusions 5 and 10. AXA accepted the complaint that it hadn’t called Ms P back. For that, and for the time it had taken to respond to the complaint, AXA said it was sending Ms P a cheque for £75.00.

Ms P brought her complaint to us in September 2024. She asked us to direct AXA to pay her claim.

Our investigator didn't recommend in late January 2025 that the complaint should be upheld. He thought that AXA's decision not to proceed with the claim was reasonable.

Ms P provided further information. Our investigator changed his view.

Our investigator recommended in early February 2025 that the complaint should be upheld. He didn't think there was any evidence of the time of the incident. So there wasn't any evidence that the car was in the custody or control of someone else at the time of the incident. The investigator recommended that AXA should proceed with the claim.

Ms P accepted the investigator's changed opinion.

AXA disagreed with the investigator's changed opinion. It asked for an ombudsman to review the complaint. It says the following:

"The PH states they were in control of the keys prior to the incident (as detailed in your adjudication)

Yet you will see on the theft report the PH states firstly that she had two keys on her, why would anyone risk walking around with both keys, secondly she states they parked, locked up but then doesn't remember anything from there. So where is the evidence that she knows what happened to the keys after the friend parked and locked up, as he was driving, this indicates that the friend parked, locked up then the PH memory is lost. So she has no memory if the friend gave the keys back or kept them, as she only realises one key is missing a lot later the following evening."

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.

From what Ms P has said, she'd been trying to sell the car. The acquaintance expressed interest in buying it. She allowed him to drive the car to a party. The AXA policy didn't cover him to drive the car.

Ms P has said that after the parking and locking of the car, she didn't remember anything that happened until she woke at home the next day. She thought she'd been drugged.

Ms P realised the loss of her car and reported it to police on Sunday 3 December 2023. She didn't report it to AXA until 13 December 2023, according to its file.

In the same list as exclusions 5 and 10, AXA's policy terms also included the following exclusions:

"3. Loss or damage caused by theft or attempted theft if the keys (or keyless entry system) to your car are left unsecured or unattended, or are left in or on your car whilst it is unattended.

...

19. Any loss or damage if at the time of the incident your car key, key fob or key card is under the custody or control of anyone with your permission who is not covered under the policy"

I may refer to those terms as “exclusion 3” and “exclusion 19”.

I don't think that AXA disagrees that someone stole the car. Rather, AXA relies on exclusions 5 and/or 10. So, in my view, the onus is on AXA to show that one or both of those exclusions apply.

The acquaintance had been driving. So I accept that he parked the car. In my view, notwithstanding that he'd been driving, there isn't enough evidence to support AXA's statement that he - rather than Ms P - locked the car.

I haven't seen enough evidence to say that the acquaintance or anyone else perpetrated a deception or a fraud on Ms P. I haven't seen any evidence, for example that the acquaintance had purported to buy or pay for the car.

Ms P reported that someone had drugged her. I wouldn't find it fair for AXA to characterise that as a deception or a fraud. Moreover, there isn't enough evidence to implicate the acquaintance in the taking of the car.

For those reasons, I don't find it fair for AXA to say that the loss was due to deception or fraud. So I don't find it fair for AXA to rely on exclusion 5.

As our investigator realised, exclusion 10 relates to the custody or control of the car “*at the time of the incident*”. That's not the same as the custody or control of the car at the time it was last driven by Ms P or someone with her permission.

In my view, there isn't enough evidence to show that the car was in the custody or control of the acquaintance after he parked it. Also, there isn't enough evidence to show that he drove the car again, with or without Ms P's permission.

Indeed there isn't enough evidence to show the time of the incident when someone took the car from where it had been parked, or how they did that.

For those reasons, I don't find it fair for AXA to say that at the time of the incident of theft, the car was under the custody or control of anyone with Ms P's permission who was not covered under the policy. So I don't find it fair for AXA to rely on exclusion 10.

Putting things right

I've thought about what it's fair and reasonable to direct AXA to do to try to put things right at this late stage.

I've thought about whether it would be fair to direct AXA to pay Ms P compensation for the distress and inconvenience it caused her by declining her claim on grounds I've found unfair. However, I don't find it fair and reasonable to direct AXA to pay such compensation because of her action in allowing her acquaintance to drive the car and because of her delay in contacting AXA.

I've also thought about whether it would be fair to direct AXA to pay Ms P the pre-loss value of the car. However, AXA hasn't yet considered the claim based on the policy terms other than exclusions 5 and 10. So I find it fair enough to direct AXA to reconsider the claim in line with the policy terms other than exclusions 5 and 10.

If and insofar as such reconsideration results in a payment to Ms P, then I will expect AXA to add interest at our usual rate from the date of 12 January 2024, when, about a month after Ms P made the claim, AXA first rejected the claim.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct AXA Insurance UK Plc to:

1. reconsider the claim in line with the policy terms other than exclusions 5 and 10; and
2. if and insofar as such reconsideration results in a payment to Ms P, pay simple interest on such payment at a yearly rate of 8% from 12 January 2024 to the date of its payment. If AXA considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Ms P how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 4 April 2025.

Christopher Gilbert
Ombudsman