

The complaint

Mr K complains that Liverpool Victoria Insurance Company Limited ("LV") unfairly declined his claim for the theft of his car under his motor insurance policy.

What happened

Mr K lost his car key whilst on a business trip some distance from his home. Because of this he was unable to lock his car. He visited a dealership but was told a replacement key would take a few days to provide.

Mr K said he parked in a secure car park and removed all valuables from his car. He checked it later in the day and confirmed it couldn't be started without the key. He then took a train home returning the next day with his spare key. By this time his car had been stolen. Mr K said this was the earliest train available and he couldn't have returned sooner.

Mr K explained that he did all he could to secure his car and that it wasn't fair for LV to decline his claim in these circumstances.

In its final complaint response LV said its policy terms exclude cover for theft if the vehicle has been left unlocked. For this reason, it maintained its decision to decline Mr K's claim. Mr K wasn't satisfied with this response and brought his complaint to our service.

Our investigator didn't uphold his complaint. He said that the policy terms were clear that no cover was in place for theft if the vehicle is left unlocked. He considered Mr K's further comments that his car had an automatic locking system. But he didn't think the evidence showed his car will have automatically locked in these circumstances. So, he concluded LV acted fairly in declining Mr K's claim for the reason it gave.

Mr K didn't accept our investigator's findings and requested for an ombudsman to review his complaint. He maintained that he took all reasonable steps possible in these circumstances and that LV should pay his claim.

The complaint has been passed to me to decide.

I issued a provisional decision in May 2025 explaining that I was intending to not uphold Mr K's complaint. Here's what I said:

provisional findings

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 my intention is to not uphold Mr K's complaint. I'm naturally sympathetic to the situation he found himself in and I'm sorry to disappoint him. But I'll explain why I think my decision is fair.

It's for the policyholder to show that they have incurred an insured loss. If they can then,

generally speaking, the insurer should pay the claim. This is unless it can rely on a policy exclusion not to.

LV referred to the following policy term to decline Mr K's complaint:

"What isn't covered.. loss or damage to your car by theft (or attempted theft) if - your car has been left unlocked or with a window or roof open."

Mr K doesn't dispute that he left his car unlocked overnight. So, on the face of it, LV's policy terms allow it to decline his claim for the reasons it gave.

Mr K has provided excerpts from his car's operating manual. This says that the car has an automatic locking system. This means that if a door isn't opened shortly after being unlocked, the system relocks the doors. I note Mr K's comments that this indicates his car will have locked itself. Meaning it was locked at the time of the theft. However, the manual states this function can be set for 60 or 120 seconds or turned off. So, I can't be certain that this function was switched on at the time of the theft. Similarly, from reading further into the manual the auto-locking system won't have activated in the circumstances described. I say this because Mr K drove to a car park, parked his car and then switched off the engine. According to the manual the locking system wouldn't activate in these circumstances.

I've thought carefully about the circumstances Mr K experienced that resulted in him leaving his car unlocked overnight. He said he discovered his key was lost whilst at a petrol station. He didn't turn his engine off as this would mean it couldn't be started again. He then drove to a dealership to ask about a replacement key. When this couldn't be provided the same day he continued his journey. He then left his car unlocked whilst he carried out the business he had travelled for. When he returned to his car he made sure the engine couldn't be started and all valuables had been removed from his car. Mr K then took a train home returning at the earliest opportunity the next day.

I don't doubt Mr K believed he took all reasonable steps he could in these circumstances to secure his car. But he didn't contact LV to explain the situation. I acknowledge he visited a dealership. But LV was the party responsible for indemnifying Mr K against loss due to theft or damage to his car. He didn't contact the business to inform it of the predicament he was in. I think LV was best placed to advise Mr K on what he should do to ensure he was still covered under his policy terms.

The locking mechanism is a key component of the car's security. So, I agree with our investigator that the fact the car was left unlocked was material to Mr K's loss.

Mr K decided to continue on with his journey and leave his car. As opposed to driving home to obtain his spare key. I note what Mr K said about it being a five-hour drive back to his house. He said he had his children with him, and he felt physically and mentally exhausted. He explained he didn't feel it would be safe to drive for another five hours given this. I understand that Mr K found himself in a difficult position. But it was his decision to leave his car unlocked and unattended overnight.

We asked Mr K for his location when he discovered he'd lost his key. He confirmed he was at a service station, and this was around 3.5 hours into his five-hour drive. He then drove to a dealership before then continuing his journey to his final destination. I think Mr K could reasonably have contacted LV when he discovered his key was lost or when a replacement key could not be provided. LV will then have had the opportunity to confirm to Mr K that leaving his car unlocked in a car park would invalidate his cover. Mr K could have driven home when he discovered his key was lost. Because he didn't do this, I don't think it was unfair for LV to rely on its policy terms to decline his claim.

Mr K said he acted reasonably in these circumstances to secure his car. So, I've considered the case law relevant to these circumstances. The approach we take here is that LV must show that Mr K acted 'recklessly' for it to be fair and reasonable to turn down his claim. This is in line with the Court of Appeal's decision in Sofi v Prudential Assurance. The test to decide whether someone has acted recklessly has two parts:

- First, the insurer must show that the insured recognised that there was a risk their car might be stolen;*
- Second, the insurer must show that, having recognised the risk, the insured took no action to prevent their car being stolen – or took actions which they knew were inadequate.*

The test isn't what an average or reasonable consumer would have thought or done, but what the individual consumer thought or did at the time.

This means that if LV wants to rely on the policy term it has it needs to show that Mr K recognised the risk of his car being stolen. Then it needs to show that he ignored that risk, or that he took steps to minimise the risk which he knew were unlikely to be enough.

Mr K clearly recognised there was a risk of his car being stolen. He makes this clear in his complaint submissions. He said he took steps to obtain a replacement key. When this wasn't possible he made sure he parked in what he described as a well-lit secure car park and removed all valuables from his car. He then returned to his car as soon as he could with the spare key. I think this shows he was aware of the increased risk of his car being stolen.

For these same reasons I think it's clear Mr K was aware the steps he'd taken were unlikely to be enough to prevent a theft. He said that he took all reasonable steps. But he was aware that his car was unlocked and left unattended in a car park. Mr K was aware that he could have driven home to collect his spare key. He could have done this when he realised his key was lost, or when he was unable to obtain a replacement. I understand this will have disrupted the plans he had for the day. And I acknowledge his comments that he was tired and didn't feel it was safe to drive home. But he could have made this decision at the service station or at the dealership. He discovered his key was missing 3.5 hours into his journey. He could have returned home at this point, reducing the length of the journey he had to make.

Having thought carefully about this, I think Mr K knew the risk he was taking by leaving his car unlocked and unattended in a carpark. And he knew that he hadn't taken steps that adequately mitigated this risk. For these reasons I don't think LV acted unfairly when it declined to cover Mr K's loss.

I'm sorry for the significant financial loss Mr K has suffered. But for the reasons I've explained I can't fairly ask LV to do anything more.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

LV responded to say it agreed with my provisional decision and had no further information or comments to provide.

Mr K responded to say that although his car was left unlocked he'd acted reasonably by taking the action he did in difficult circumstances. He said it wasn't safe for him to have driven home once he knew he'd lost his car key.

Mr K said that his conduct wasn't reckless with respect to the case law involving *Sofi v Prudential*. But rather he had acted in a pragmatic and measured way to an unforeseen and stressful situation. Mr K said I should view his lack of immediate contact with LV in a human context given the difficult circumstances he found himself in.

Mr K said his policy terms should be considered in a fair and proportionate way balanced against the circumstances he faced and the action he took.

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.

But having reconsidered the evidence alongside Mr K's further comments I'm not persuaded that a change to my provisional decision is warranted.

I acknowledge what Mr K has said about why he didn't drive home when he realised his car key had been lost. But I think this would have been a reasonable course of action to ensure his car wasn't left unlocked overnight. As I said in my provisional decision, Mr K discovered his key was lost whilst he was at a service station. He then drove to a dealership to enquire about getting a replacement key. When a key couldn't be provided that day he then drove on to his final destination. I think a reasonable decision would have been to return home. This would have meant the overall journey was significantly shorter. In not doing so Mr K risked leaving his car unattended and unlocked overnight.

I've thought about Mr K's comments regarding the case law I referenced in my final decision. But Mr K knew there was a risk of his car being stolen as it had been left unlocked and unattended. He also knew that the actions he'd taken were unlikely to be enough to prevent it being stolen. As discussed the locking mechanism is a key component of the car's security. Not locking it was therefore material to the loss. Because of this Mr K hasn't persuaded me to change my decision.

I note what Mr K says about not contacting LV earlier. But as I said in my provisional decision he was taking a risk by leaving his car unlocked and unattended. It was LV that would have to pay for any loss. But Mr K didn't contact it to explain his predicament or ask what he should do so that he remained covered.

I'm sorry Mr K's car was stolen. This must be very distressing for him given the significant sum of money involved. But I don't think LV acted unfairly when it relied on its policy terms to decline Mr K's claim for the reasons it gave. So, for the reasons given here and in my provisional decision, I'm not upholding this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 10 July 2025.

Mike Waldron
Ombudsman