

## complaint

Mr V complains that Tradewise Insurance Company Limited will not pay his claim for the theft of his car under his Motor Trade Road Risks Insurance policy because he left the car and its key at a friend's house. He wants it to honour his claim.

## background

Mr V parked his car at a friend's house and posted the key through the door as he intended to go for a drink and did not want to drink and drive. Unfortunately there was a burglary and the thieves found the car key and they stole the car. It has not been recovered. Tradewise declined Mr V's claim due to an exclusion in his policy that said no claims would be paid if the car is *"driven by or is in the charge of any person who is not named on the certificate of insurance under section 5 persons entitled to drive"*. Mr V's friend was not on the policy.

The adjudicator did not recommend that the complaint should be upheld as he thought that Tradewise could put that exclusion in its policy and rely on it to decline the claim.

Mr V responded that this was unfair and, as he saw it, no claim could ever succeed unless he had the keys on him at the time of loss.

## my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I can understand that Mr V is upset and frustrated that his claim has been declined and that he feels strongly that he is suffering because he tried to do the right thing by leaving his car and key whilst we went for a drink.

Our remit in cases like this is to investigate whether the insurer acted fairly and reasonably and, most importantly, in line with the terms and conditions of the policy when it made the decision about the claim.

Tradewise has relied on one main exclusion for declining Mr V's claim. This is found on Page 7, General exclusions, 1(b), in his policy wording booklet which states:

*"The Company shall not be liable in respect of:*

*1. Any accident, injury, loss, damage or liability occurring whilst any Insured Vehicle is being.  
(b) Driven by or is in the charge of any person who is not named on the Certificate of Insurance under section 5 Persons Entitled to Drive."*

Insurance policies do not cover every loss a policyholder may suffer and there are terms and conditions applicable to every insurance policy. In this case the term that Tradewise has relied on significantly restricts cover because it does not matter what Mr V's intention was, if the car is left in the charge of someone not on the insurance certificate, cover is then not provided.

Tradewise says that motor trade policies have different benefits and conditions to private motor policies and general exclusion 1b is designed to limit the risks of multiple vehicles being used by different drivers and being kept at different places. Mr V's policy did have social, domestic and pleasure cover plus additional business use for Mr V's other work, but it was still a motor trade road risks policy with different benefits and conditions to a private motor policy.

Mr V said that he attended a drink driving course where he was advised to leave his car keys with a responsible adult if he was drinking. He thought that the policy exclusion made it impossible to follow that advice. However, as the adjudicator has explained, this advice is generic and insurers can make commercial decisions on what is and isn't covered by their specific policies. It was open to Mr V to leave his car but retain the keys, meaning that he could not have driven it, which would have reduced the risk to it.

I find that leaving the car and its key at his friend's house meant that the car was left in his care. I find that general exclusion 1b is clear and it means the car can't be driven by or left in the care of anyone not named on the certificate of insurance. Therefore I can see no reason, in this particular case, why Tradewise should not be entitled to rely on the exclusion to reject the claim and so I do not require it to pay it.

Whilst this does bring about what might appear to be a rather harsh result for Mr V, I find that Tradewise has undertaken a legitimate exercise of its commercial judgement to determine which risks it is prepared to cover and has clearly excluded this risk and adequately highlighted this exclusion in the policy booklet. I am therefore satisfied that Tradewise acted fairly when refusing to deal with Mr V's claim and in line with its own terms and conditions.

Mr V says that he told his broker that he wanted private motor insurance cover for his car, not a Motor Trade Road Risks policy. The adjudicator has already advised Mr V that he should address this concern about the suitability of the policy to his broker in the first instance.

### **my final decision**

For the reasons above, it is my final decision that I do not uphold this complaint and I make no award against Tradewise Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr V to accept or reject my decision before 15 May 2015.

Phillip Berechree  
**ombudsman**