

complaint

Mr R has complained about Tradewise Insurance Company Limited's decision to reject a claim he made a claim under his motor trade policy following the theft of a car.

background

Mr R bought a motor trade insurance policy. In October 2017 he made a claim to his insurer, Tradewise. While selling a car, a person claiming to be a buyer stole it.

Tradewise investigated the claim and decided to reject it. Mr R's policy doesn't cover all theft claims. It excludes cover for when a theft happens while the keys have been left in the car. And it also excludes cover if the theft happened as a result of deception by a potential buyer. While it sympathised with the position Mr R was in, Tradewise said it fairly applied the exclusions.

Mr R was very unhappy with Tradewise's decision. He said he believed it made this decision because Mr R told it the car was a gift from his son. But Tradewise said that any concerns over the ownership of the car were now secondary to its decision to reject the claim. So it didn't affect the outcome.

Mr R remained unhappy, so he brought his complaint to us. Our investigator thought that Tradewise had been clear in its policy documents and key facts as to its exclusions for theft. So he thought it had reasonably applied them when deciding to reject Mr R's claim.

I issued a provisional decision on 10 May 2018. I explained why I thought it was unduly harsh for Tradewise to apply its exclusions in this case. So I recommended Tradewise consider Mr R's claim under the remaining terms and conditions of the policy.

Tradewise says it received my provisional decision. It hasn't made any further comments. Mr R has received my provisional decision. He says the person who stole his car has been convicted for the offence.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As I haven't received any new information to change my mind, my final decision remains the same as my provisional decision.

I think Tradewise clearly set out its exclusions in its 'Key Facts' statement and policy document. There are three exclusions that Tradewise say apply to Mr R's theft claim. They are;

- "13. Loss of or damage to any Insured Vehicle resulting from the theft or attempted theft when the ignition keys have been left in or on the Insured Vehicle or if all the doors, windows and other openings have not been closed and locked.*
- 15. Loss or damage of any Insured Vehicle by deception by a purported purchaser or agent.*
- 16. Loss or damage to any Insured Vehicle resulting from theft or attempted theft by a prospective purchaser or agent."*

Mr R said the thief posing as a buyer called him to come and look at the car which Mr R was selling. He looked around the car, under the bonnet and in the boot. Mr R said he was in the passenger seat and the buyer was in the driving seat. The buyer asked to start the car, so Mr R handed him the keys.

When the buyer started the car, a warning light came on the dashboard to say the bonnet was open. The buyer told Mr R - who saw the warning - and so got out of the car to slam the bonnet shut. Mr R said the lid was down, but not properly shut. As Mr R went back to the passenger side of the car – he had his hand on the door handle – the thief drove off at speed. Mr R's arm was injured. He immediately reported the theft to the police.

In 'theft by deception' cases, even if the exclusion is clear - we draw a distinction between those circumstances in which the consumer has voluntarily handed over possession of the vehicle to the 'thief' and those where the consumer intended to retain control over the vehicle. The reason for our approach is because we think a strict and literal application of the 'deception' exclusion has the potential to result in unduly harsh outcomes.

Based on the circumstances of this case, I don't think Mr R voluntarily handed over control of the car. When he handed the keys over to the buyer to start the engine, Mr R was inside the car. I think the distraction of the bonnet having been left open allowed the thief a small window of opportunity to steal the car.

So in these circumstances I think it's unfair for Tradewise to reject Mr R's theft claim by applying its exclusions. I think Tradewise should consider Mr R's claim in line with the remaining terms and conditions of his policy.

my final decision

For the reasons I've given above, my final decision is that I uphold Mr R's complaint. I require Tradewise Insurance Company Limited to consider Mr R's theft claim under the remaining terms and conditions of his policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 July 2018.

Geraldine Newbold
ombudsman