

## **complaint**

Mr S complains the Society of Lloyd's has unfairly declined his motor insurance claim when his car was stolen.

## **background**

Mr S insures his car through the Society of Lloyd's. He has insured it for £99,000 – a specified value. As a condition of Mr S' insurance he must keep his car in a locked garage between 11pm and 6 am when at his residence. And he must have a Thatcham approved Category 5 Vehicle Protection and Tracking System installed and operational.

In June 2018 Mr S awoke to find his car stolen. He hadn't garaged his car the night before as he was leaving early for a flight. And because of being out of the country he didn't submit a claim until a few days later.

Lloyd's declined the claim as Mr S didn't have the necessary tracker in place and he didn't comply with the requirement to garage his car overnight. Mr S complained about that decision but Lloyd's stood by it. So Mr S asked us to look into the matter.

Our investigator didn't think Lloyd's had declined the complaint unfairly. The conditions had been made clear to Mr S and she found it was entitled to rely on them. She concluded that as Mr S hadn't complied with the conditions it was fairly able to decline the claim.

Mr S didn't agree and feels very strongly this claim should be covered. In summary he says:

- His car was stolen previously and later recovered. Lloyd's covered the damage - it didn't decline the claim because of the same conditions.
- He said Lloyd's should have reminded him he wasn't complying with the conditions and he would have taken action.
- He believes that in accordance with cases heard in court, if an insurer has decided not to rely on conditions in the policy then it can't do so at a later date.
- It was a subsidiary of Lloyd's that declined the claim and he was informed it wasn't able to make a decision based on the facts as outlined. He considers this office has not understood the specifics of why Lloyd's were unable to reach a decision.
- Rejecting this claim will have a greater impact on his life – the circumstances are unfortunate and it isn't out of malice that the conditions weren't adhered to but because of a miscommunication by the insurers in the first instance. This will cause undue hardship.

## **my 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, I don't uphold this complaint. I explain why below.

Mr S is correct that the Society of Lloyd's isn't the insurer for his policy. The insurance policies are provided by syndicates but Lloyd's handles complaints and issues the final responses. For our purposes the complaint is set up against Society of Lloyd's. And I'm satisfied that Lloyd's has given its reasons to Mr S and to us for declining this claim.

Mr S has said that where insurers have agreed claims even though specific policy clauses weren't adhered to, courts have deemed this to be a waiver of those clauses in full. Mr S hasn't referred to any authority in support of his statement. I have considered the Insurance Act 2015 and the regulatory requirements and, although an insurer can decide not to rely on a breach of condition to exclude a claim, I haven't seen anything to suggest that means it can't rely on those conditions in the future. I'm therefore not persuaded Mr S' previous claim being met means this claim must be met also.

I turn now to this claim. Mr S' policy had two endorsements placed on it which added to the general exclusions contained within the policy:

*We will not cover any loss or damage to your vehicle(s) bearing the registration number(s) XXXXXXXX caused by theft or attempted theft unless a Thatcham approved Category 5 Vehicle Protection and Tracking System is installed and operational with the maintenance or annual subscription paid at the time of the loss.*

*We will not cover any loss or damage to your vehicle(s) bearing the registration number(s) XXXXXXXX caused by theft or attempted theft between 23:00hrs and 06:00hrs unless the vehicle is locked in a garage or similar building and there is evidence of violent and/or forcible entry or exit from the building.*

These conditions were set out on Mr S' policy schedule. And I've been provided evidence this was sent to Mr S via e-mail. So I'm satisfied these endorsements were made clear to him. It was for him to ensure the conditions were being complied with.

Mr S said he didn't put his car in the garage as he was leaving early for the airport the following day. I appreciate he may have had his reasons for not garaging his car. But that does mean he breached a condition of the policy as it wasn't in the garage when it should have been. I have also considered the video information provided and Mr S' belief the car could have been stolen from any location at any time. But having the car in a garage meant it wouldn't have been in sight – so any prospective thief might not have known of the existence of the car at all. And even if the thief did, they would then need to contemplate breaking into the garage – all of which would have increased the chances of being discovered and perhaps caught. If Mr S had garaged his car as required and had there been evidence of violent and/or forcible entry, then Lloyds' wouldn't be able to rely on that exclusion.

As Mr S didn't comply with the condition and it was breached, I'm not persuaded its decision to decline the claim is unfair.

Lloyd's has also declined the claim as Mr S didn't have the required Thatcham approved category 5 tracker. I understand instead Mr S had the tracker that came as a package with the car – something he considered to be the equivalent of the Thatcham category 5. But I haven't considered this in any detail as a breach of the above condition is sufficient for me to find that Lloyd's hasn't acted unfairly.

I do understand this outcome will cause Mr S considerable difficulty, not least because the car was on finance. But I can only ask Lloyd's to do something if I find the claim has been declined unfairly and that's not the position here.

**my final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 March 2019.

Claire Hopkins  
**ombudsman**