

## **complaint**

J Ltd complained that Aviva Insurance Limited refused to pay their claim under their fleet motor insurance policy after their car was stolen.

## **background**

After J Ltd's car was stolen, they reported it to the police and made a theft claim to Aviva. However the police discovered that the car had been cloned. So Aviva declined their claim, cancelled their insurance and refunded their premium. They said that J Ltd didn't have insurable interest in the car.

But J Ltd said that they weren't to know that the car was cloned or stolen, as they'd bought it in good faith and done checks on it before they bought it. Their manager Ms G made the complaint on their behalf.

The investigator didn't recommend that their complaint should be upheld. She didn't think that sufficient steps were taken to ensure that the car was genuine, and so didn't ask Aviva to do anything more. But J Ltd didn't agree and so their case was passed to me to decide.

I issued my provision decision on the case on 17 June 2019, saying I didn't intend to uphold the complaint. Aviva didn't add anything. Ms G, on J Ltd's behalf, made some further comments since then, which I have read in full and respond to below. I don't deal with every point again, as I consider I've already covered the matters they raise.

## **my findings**

I've considered all the available evidence and arguments again to decide what's fair and reasonable in the circumstances of this complaint.

J Ltd's car was stolen about ten days after they bought it. They reported the theft to the police, who discovered that their car was a cloned copy of another car. In other words, someone already owned a car with that registration number. Cloning is a type of car identity theft. It happens when someone takes the registration and other information about a car owned by someone else (the "real car"), and applies them to another, usually stolen car, (the "cloned car"). Those responsible will often then steal back the cloned car.

When Aviva discovered that the car was cloned, they said that their contract with J Ltd to insure the car wasn't valid. This was because J Ltd didn't have insurable interest in the car they'd insured - the real car - because J Ltd didn't legally own the real car. It was never actually theirs. And the car J Ltd did have was not the one Aviva thought it was when they entered into the insurance contract.

Aviva accepted that J Ltd didn't know the car was cloned, but they felt that J Ltd could have done more to check its genuineness before buying it. So Aviva said that J Ltd's loss occurred when they bought the car, not when it was stolen, and Aviva weren't liable for that under the policy. They wouldn't pay the theft claim and said that J Ltd's recourse was against the seller of the car.

At one point Aviva suggested that J Ltd could be seen as handling stolen goods. J Ltd were understandably very unhappy about that as they said they'd acted in good faith. I think that Aviva's comment was unfortunate, but I see that they apologised for that. They also offered J Ltd £100 in compensation for not giving them good service just after the car's theft, when they asked about tracking the car. I think that Aviva's compensation for that was fair.

J Ltd wanted Aviva to pay their claim. They said that they'd bought and insured the car in good faith and they felt that they'd carried out all necessary checks to protect themselves.

In deciding if an insurer has acted fairly and reasonably in rejecting a claim in these circumstances, we look at whether the policyholder bought the second hand car in good faith and took all reasonable steps beforehand to ensure that it was genuine. We think reasonable steps would include matters like checking whether the car's purchase price was comparable to that of similar cars in make, model and age, obtaining the car's registration form and a purchase receipt both showing the seller's contact details (-even though these might turn out later to be false). We'd also expect the buyer do a check on the car's history.

Ms G told us as follows. The car was for sale on an online auction website. It was advertised there as being grey in colour. J Ltd's director, Mr G, went to view the car at what appeared to be a family home. The seller told Mr G that he was selling the car at a lower price to achieve a quick sale as he was going through an acrimonious divorce and his ex-partner had attacked the car on several occasions and had destroyed the spare key. The car did have some damage to its sides.

Mr G paid £9,500 for the car in cash. He got a handwritten receipt, but didn't get the car's service history and only got one car key. The receipt shows the seller's name and address on it. J Ltd said that they also received the V5 registration form, and that it showed the seller's name and address. They showed us the part of the registration form that they'd sent to the DVLA, but that particular part doesn't show us the seller's name and address. The registration form says that the car's colour was silver.

Ms G says that, before they bought the car, they also did an online car history check which didn't suggest any problems. She showed us copy of that result. It was dated 6 November and said:

*"there is no adverse data recorded against the number plate you've provided. However, to ensure you're fully protected we still need to check a few more details relating to the VIN/Chassis number V5C/Logbook. Please provide the rest of the vehicle details by 06/12/2017 and before purchasing the vehicle."*

J Ltd said that they did the online check on the morning before they bought the car. But although the above online car history check result, and the payment receipt for that check, are both dated 6 November, the receipt for their cash purchase of the car is dated 5 November.

So I didn't think that J Ltd had shown that they did any online check before they bought the car. Ms G says that they paid the deposit on 5 November and returned on 6 November after doing the online car history check to pay the balance. Nevertheless the receipt for the balance is dated 5 November.

In any event, I accepted that if, before they bought the car, J Ltd had done that same online check, its result would have been the same.

But J Ltd didn't take the checking company's recommendation and enter the vehicle identification number (VIN)/chassis number before buying the car. The problem with omitting that step and only providing the registration number is that the car may not show as stolen. That's because the registration number has been cloned from the real car. But the real car hasn't been stolen. However if the VIN as well as the registration number is checked that might flag up other issues, and if the VIN doesn't match the registration number on the V5 that may indicate cloning.

Ms G said that she had checked the VIN on the different parts of the car and they matched each other and didn't look as if they'd been tampered with. But that's not the issue. What's relevant is whether J Ltd checked before purchase that the VIN on the car they bought matched the other information they were given about the car such as its V5 registration form. There's no suggestion that they did. J Ltd say that there's no obligation on a car buyer to do those checks, but we do think that it's a reasonable precaution to take before buying a second hand car for about £10,000 in cash.

In Ms G's comments on my provisional decision she's said that even if she had input the cloned car's VIN, instead of just the registration number, into the online car history check before J Ltd bought the car, it wouldn't have shown up any adverse history for the car.

She said that this was because she'd given the cloned car's VIN, not its registration number, to the car tracking company after the car was stolen, and they'd claimed to be able to track the car, though ultimately Aviva wouldn't pay to activate the tracking. But, assuming the tracking company did genuinely track a car using that VIN, it could at most it mean that they were tracking the cloned car. It doesn't mean that the VIN on the cloned car matched the VIN on the real car.

Ms G has also sent us a copy email from the company with whom she did the online history check on the car on 6 November. It says:

*"On 06/11/2017 when you checked the vehicle it was clear.  
You then updated your check on 15/11/2017 and included the VIN on this report, at this time the vehicle showed as stolen with a marker dated 14/11/2017.  
In conclusion when you first checked the vehicle the reason it showed as clear was due to the fact that the police only added their marker on the 14<sup>th</sup> of November and this was added the same day to HPI."*

Ms G says that this also confirms that the VIN number she had and the one on the cloned car were the same. But at most the email suggests that the online check company allowed Ms G to enter into their system the VIN of the cloned car after it was stolen. It still doesn't confirm that the VINs of the cloned car and the real car were the same. The issue is whether J Ltd made reasonable checks that the VIN on the car they bought matched the real car's VIN.

And regardless of what the email says about why Ms G's original check didn't show the car as stolen, I think it's more likely that was because the real car with that registration hadn't been stolen. So none of this changes my view about the reasonableness of J Ltd's checks on the car before they bought it.

I thought that there were other reasons which should have alerted J Ltd to make further checks on the car. In particular, I thought that the car's price should have caused them some concern. The investigator checked the motor trade guide we use to determine car values and found that a similar car has a market value of about £14,000 - £15,000.

J Ltd paid £9,500 for the car, so that was much less than its market value. And although they said it had some damage to its side panels, and only had one key, I didn't think those issues would reasonably justify such a large discount in market value. It's also possible to do an online valuation check as part of a car's history check but I'd not seen anything to suggest that J Ltd did this. As regards the seller's reasons for the selling price, I appreciated that a divorce is a reason someone may wish to sell a car quickly, but again it's unlikely to warrant such a large reduction in market value. And I didn't think that the other reason the seller gave, that his ex-wife kept trying to attack the car, was plausible.

Ms G didn't agree with the valuation that the investigator relied on and thought that it was too high. But the investigator used the trade guide valuations that it's Service's policy to use, and we find them reliable. Ms G also felt that given the car's bodywork damage and that it had only one key, the price was not unreasonable. But she hasn't said anything to make me change my mind on that. She also suggested that Aviva should have checked and advised if they felt J Ltd were paying over the odds for the car and potentially being the victim of crime, but there's no obligation on an insurer to do that, as it's the consumer's responsibility to take reasonable precautions.

I saw that there'd been a lot of discussion about the car's colour. It seems that at some point J Ltd had described the car as black. But the online advert had described it as grey, and the V5 referred to it as silver. So the investigator thought that these discrepancies should have raised J Ltd's suspicions and should have prompted them to do further checks to be carried out on the car itself. However Ms G thought that it was pedantic to focus on the car's colour.

She felt that the car's colour could potentially be described as black, grey or silver, as they were all in the same colour range. J Ltd didn't think that this was a discrepancy that they should have spotted or that should have made them suspicious. I accepted that colour can be matter of opinion, so that sort of discrepancy on its own wouldn't necessarily be expected to alert them to a problem with the car. But given all the other factors I've mentioned above, I did think that there was enough to raise their suspicions about the genuineness of the car and enough to have prompted them to do the above reasonable checks before they bought it. I also took into account that J Ltd are a business, and had several other cars on their insurance policy with Aviva, and so they had experience of buying cars.

Taking all J Ltd's new comments into account, I don't see any reason to change my provisional view. I still accept that J Ltd bought the car in good faith, in that they didn't know that it was cloned. But taking all the above factors together, I still don't think that it was unreasonable of Aviva to decide that J Ltd didn't take reasonable care and do reasonable checks before buying the car. I appreciate that the situation is very unfortunate for J Ltd and that it must have been stressful for those involved there to have been the victim of a crime. But it wasn't Aviva's fault that J Ltd bought a car that was not genuine. And so I agree that J Ltd's loss occurred when they bought the car and not when it was stolen. I don't think that Aviva were liable under the policy for that loss. And so I can't say that it was unreasonable of Aviva to decline J Ltd's claim, and I don't ask them to do anything else.

**my final decision**

For the reasons I've discussed above, and in my provisional decision, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask J Ltd to accept or reject my decision before 30 August 2019.

Rosslyn Scott  
**ombudsman**