

## **complaint**

Mr J complains that Tradewise Insurance Company Limited unfairly declined a claim he made on his commercial motor trade policy after his car was stolen.

## **background**

Mr J took two men posing as potential purchasers of his car on a test drive. When they returned, the man sitting in the driver's seat got out to inspect the engine. He got back into the car, then asked Mr J to close the bonnet. He said he couldn't see the trip computer with it open. As Mr J did so, he drove the car off – with the doors wide open - injuring Mr J's leg.

Tradewise rejected Mr J's claim. It said he'd left the keys in the car, which triggered a policy exclusion. It also said theft by a prospective purchaser – and by a prospective purchaser's deception - were excluded from cover under the policy.

Our investigator said the theft exclusion didn't apply, as Mr J was close enough to the car at all times to act as a deterrent to thieves. She said the two men weren't potential purchasers. And she didn't think Mr J had been deceived into handing over control of his car. She thought the thieves spotted a brief opportunity and took it.

Tradewise said if the investigator thought the men had no intention of buying the car, then they had deceived Mr J in order to steal it. Tradewise later said Mr J shouldn't have let someone who wasn't insured drive the car.

As there was no agreement, the complaint was passed to me for review.

## **my findings**

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

I don't think Tradewise can rely on the 'keys in car' policy exclusion in this case. Mr J remained very close to the car the whole time, so it was never unattended. In these circumstances we don't think it's fair to decline a claim for that reason.

I agree with the investigator that the men who expressed an interest in the car weren't actually potential buyers. But they presented themselves as such. So I think it's fair for Tradewise to say that Mr J was deceived by them in that way.

I can see why Tradewise thinks the exclusion in the policy for theft by deception should apply. But I don't think Mr J was deceived into freely handing over control of his car to the thieves. I think he intended to stay in the car whilst the men considered its features and decided whether they wanted to buy it.

The thieves created a very brief distraction. Mr J says the reason given to him by the thief for wanting the bonnet to be closed was a valid one. It meant he left the car for just a few seconds – during which he had to stand in front of it. I can see why he didn't think there'd be a problem with that. Mr J couldn't have known that the instant he moved a few feet to his right to re-enter the car it would be driven off with the doors wide open. His leg was injured and it sounds as though he was lucky he wasn't more badly hurt.

In considering cases like this, we try to balance the particular circumstances described by a consumer with the harshness of applying the exclusion. I think some consumers act in a way that shows they willingly handed over control of their car. But I don't think that's the case here. I understand why Tradewise made its decision. But in my opinion it wasn't fair and reasonable in this case for it to decline the claim based on the exclusions it has relied on.

**my final decision**

My final decision is that I uphold this complaint. I require Tradewise Insurance Company Limited to reconsider the claim in line with the policy's remaining terms and conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 14 May 2018.

Susan Ewins  
**ombudsman**