

The complaint

Mr N complains that Amtrust Europe Limited declined his claim made on his motor insurance Guaranteed Asset Protection (GAP) policy.

What happened

Mr N's car was stolen, and he made claims to his motor insurer and to Amtrust. His motor insurer settled his claim. But Amtrust decided that Mr N had been negligent and not locked his car. And so it said it declined his claim in keeping with the policy's terms and conditions.

Our Investigator recommended that the complaint should be upheld. He thought there wasn't persuasive evidence that Mr N had left the car unlocked and so been negligent. He found it persuasive that the motor insurer paid Mr N's claim and didn't change its decision after considering Amtrust's evidence. So he thought Amtrust should pay Mr N's claim, with interest, and also pay him £200 compensation for the avoidable trouble and upset its decision had caused.

Amtrust asked for the complaint to be reviewed by an Ombudsman, so it's come to me for a final decision.

What I've decided – and why

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

Our approach in cases like this is to consider whether the insurer's acted in line with the terms and conditions of the policy and fairly and reasonably.

Amtrust declined Mr N's claim because of a policy term:

“4. WHAT IS NOT COVERED

4.2. Any total loss of whatsoever nature arising directly or indirectly, in whole or in part, due to any act or omission which is wilful, unlawful or negligent on your or the driver of the vehicle's part.”

Amtrust also told us that it had other concerns about the claim. But I can't see that these concerns were investigated and so I think they are purely speculative. So I'll consider here whether Amtrust has reasonably established that Mr N was negligent in caring for his car and that this then made the car vulnerable to theft.

The evidence that Amtrust relied on in saying this was from CCTV footage and expert assessment of the car's two keys. This found that one key's battery was flat, and the other's was low. Amtrust thought this meant that the key may not have locked the car at the time of the theft. CCTV footage showed the thieves approaching the car and opening unlocked doors before driving it away.

But I think there are some concerns about concluding from this that Mr N hadn't locked his car. Firstly, the key investigation was done three months after the theft. So it's hard to know whether the ability of the keys to successfully lock the car would have changed in this time.

The investigator's key report doesn't comment on whether or not the car was locked at the time of the theft. It says that it's unlikely that the live key would operate reliably. Also, the investigator's key report says that it's possible a device could have been used to stop Mr N locking his car or a device could have been used to steal the car. So I'm not satisfied that the key investigation shows that the car was left unlocked.

Amtrust later instructed another investigator to look into the matter. This investigator said he had contacted Mr N's motor insurer, but it didn't think there was any evidence to suggest negligence or any issues with the claim. The motor insurer told the investigator that a device could have been used. The investigator said the car was unlocked before the theft, but not that Mr N had left the car unlocked.

The CCTV evidence that Amtrust relied on starts just a few seconds before the actual theft. So there remains a possibility that the thieves could have unlocked the car before the film starts. Amtrust could have asked for CCTV footage recorded before the actual theft. But it didn't and this hasn't been kept. And I think it's unfair to penalise Mr N for this now, eighteen months later.

Mr N was abroad at the time of the theft and he told us that no one else had access to his car's keys in this time. He said the car was parked outside his house and family members would have noticed if the car had been unlocked as the wing mirrors wouldn't have been retracted.

Because of these concerns, I don't think it was fair or reasonable for Amtrust to decide that Mr N had left his car unlocked and that he had been negligent because of this. It follows that I think it was unfair and unreasonable for Amtrust to decline the claim for this reason. And I think it should now settle Mr N's claim, with interest as Mr N has been without his money for some time.

The delays in the claim have prevented Mr N from replacing his car. And he has been caused stress and upset by Amtrust's unfair decision. Our Investigator recommended that Amtrust should pay Mr N £200 compensation for this trouble and upset. I think that's fair and reasonable as this level of compensation is in keeping with our published guidance for the impact on Mr N.

Putting things right

I require Amtrust Europe Limited to do the following:

1. Pay Mr N's GAP claim for the loss of his car, adding interest to this settlement at the rate of 8% simple per annum from the date of the decision to decline the claim to the date of payment†.
2. Pay Mr N £200 compensation for the distress and inconvenience caused by its handling of his claim.

† HM Revenue & Customs requires Amtrust to take off tax from this interest. Amtrust must give Mr N a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require Amtrust Europe Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 7 July 2022.

Phillip Berechree
Ombudsman