

The complaint

Mr H complains about Liverpool Victoria Insurance Company Limited's (LV) decision to decline his claim for the theft of his car, under his motor insurance policy.

What happened

In May 2021 Mr H's car was stolen from his driveway. He reported the theft to the police and made a claim to LV. He says he was interviewed by a company appointed by LV about the circumstances of the theft. Concerns were raised that he had supplied a spare key to LV to examine. But Mr H says he has only ever had one key, and this is the one he provided.

LV arranged for the key to be examined. Its specialist determined the mileage data saved to the key didn't match the mileage reportedly covered by the car. It also says the key didn't show the expected physical signs of a key that was in use and also that the battery was flat.

LV declined Mr H's claim. It says based on its specialist's findings the key sent by Mr H isn't the key that was last used to drive his car. It says the car has a number of security features that make it very difficult to steal without a key. It also says there was no evidence of broken glass, from thieves breaking a window to gain access. LV believes Mr H supplied a spare key, and that the car was likely stolen using the other key, which it thinks could've been left in the car.

Mr H says that he'd changed the ECU in his car, which might explain the mileage discrepancy with the key. LV says its key specialist and in-house engineer didn't think this was a likely cause of the mileage discrepancy.

LV says it contacted the car manufacturer's approved garage Mr H had been in touch with to ask for evidence that the key hadn't been updating with the correct mileage for some time. It says the garage wasn't able to provide this information. So, it based its decline decision on the opinion of its specialist and in-house engineer.

Mr H didn't think this was a fair outcome and referred his complaint to our service. Our investigator upheld his complaint. He thought Mr H's testimony was feasible. He says it was possible the key mileage discrepancy was caused by another issue rather than it not being used. And that there was a myriad of possibilities for how the car could've been stolen. Our investigator didn't think LV had treated Mr H fairly when declining his claim based on the evidence and investigations it had carried out.

Our investigator thought LV should reconsider Mr H's claim. LV disagreed. It says the car couldn't be stolen other than by placing a key in the ignition. Cloning the key would only allow the thief to get inside the vehicle, it wouldn't start it. It also says relay theft wouldn't work as a key is still required in the ignition to start the car. And that lifting the car onto a transport would've been noisy, and Mr H had reportedly heard nothing on the night of the theft.

Because it didn't agree, LV asked for an ombudsman to consider the complaint.

It has been passed to me to decide.

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.

Having done so I have decided to uphold Mr H's complaint. Let me explain.

LV declined Mr H's claim as it wasn't satisfied that the theft of his car happened as he'd reported. In considering his complaint I need to be satisfied that LV carried out a thorough investigation, that it obtained appropriate evidence and that this supports the decision it reached.

LV arranged for Mr H to be interviewed about the theft. The report says he appeared happy to assist and answered all questions put to him in a fair and reasonable manner. The main concern LV had was with the key Mr H provided for it to inspect. More specifically that the mileage data stored on the key was around 15,750 miles less than the last recorded odometer reading. The last reading was taken when the car was MOT'd in July 2020, which was around ten months prior to the theft of Mr H's car.

I have read the report from LV's key specialist. It highlights the mileage discrepancy. It also says the blade of the key is "*largely dull*", suggesting it hadn't been used in some time. The report indicates this could have been for over a year based on its appearance. Although it does say the key blade shows evidence of light abrasion. The report states that the battery in the key is dead. And the battery is soldered to the PCB, which meant the battery couldn't be changed and the remote functions couldn't be tested.

The report explains that the key blade has to be in the ignition to start the car. The head of the key contains a transponder that uses a shortwave transmitter that has to be in close proximity to the ignition for it to be read. The report states this is more secure than newer wireless proximity key fobs as the key has to be cut to the correct pattern for the key to turn, and the transponder programmed correctly for the engine to start. It says the turning of the key releases the steering lock and the transponder disables the immobiliser allowing the engine to fire. The report says unlike newer proximity keys/vehicles Mr H's car cannot be stolen using the relay method and it cannot be "*hotwired*".

In his report LV's specialist says:

"Traditionally, in order for any new keys to be programmed, an existing key blade, or the key cut tab (issued when new) is required to physically cut the correct pattern to a blade. The transponder and remote then have to be programmed to the vehicle ecu, which requires access to the vehicle and on-board diagnostic port and takes some time. In order to access the on-board diagnostic port without a key, the window would likely have to be smashed, leaving debris at the scene of the theft and causing the alarm to sound. If the alarm didn't sound and there was no glass at the scene of the theft, its highly likely that a programmed remote was used to access the vehicle."

In his witness statement Mr H says he didn't hear anything during the night of the theft to alert him to any problems. He also says there was no smashed glass, no drag marks in the stones and he would've heard it had the BMW been driven away.

Based on its expert's opinion and the circumstances described by Mr H, LV concluded it was unlikely the car could have been taken without the individual who took it having access to a

key. In its final response to his complaint it says, *“we feel your car was more than likely stolen with a key still in it”*. Whereas Mr H says on the night of the theft he remembers locking the car using the remote key. He says he heard the doors lock and saw the indicators flash.

Mr H told LV that he had swapped the ECU from another car to the insured car around the time he bought it. He thought this might explain the discrepancy with the mileage showing on the key. He explains that he is a trained and chartered vehicle technician and does all his own work and maintenance.

LV asked its in-house engineer if this could've affected the reading on the key. Its engineer didn't think it would.

LV contacted the manufacturers approved garage that Mr H had been in touch with respect to the mileage data on his car key. Its email says:

“He [Mr H] says he has discussed the key and the mileage with you. He said “they can see that the key has not been updating the mileage and evidently for some time”. Would this just mean it has not been used? Or are you stating there was something wrong with the key? If it is the latter can you present any supporting evidence of this?”

The garage's operations director responded to say:

“Hi, being honest it could be either of the reasons you have listed but could also be a problem with the car reading the key, I would be unable to supply any evidence to confirm what the problem could be.”

I think this shows there was another possibility for why the key data didn't match with the known mileage.

Mr H disputes that the key battery was flat. He says the battery charges when it's in the car's ignition. He says he tested the battery once it was returned to him and found it had a 2.28v charge despite it not having been used or charged in over a year since the theft. He has sent a video of him testing the key battery, which shows the battery has a charge. Mr H says the battery is welded in place, as referred to by the LV's key specialist. But he says this was done when the key was manufactured.

LV says Mr H didn't provide the sellers details he bought his car from, which meant it couldn't make enquiries with them. In response Mr H says he contacted the seller who was initially cooperative with him but became less so further down the line. He says it's illegal to hand out details without consent. And says even V5C documents don't display previous keeper details for this reason. The notes from LV's interview detail Mr H's response that he was concerned about GDPR rules and wasn't willing to hand over contact details for the seller until he had confirmed he was happy for this to happen.

I have considered in detail the investigations LV carried out, and the basis on which it decided to decline Mr H's claim. But I don't think it's done enough to fairly decline the claim based on the reasons it gave.

There is a discrepancy with the mileage data stored in the key compared to the mileage Mr H's car is known to have covered. But the manufacturer's response confirms there could be a problem with the car reading the key. My understanding is that this issue can't be verified further without access to the car, which isn't possible. But I think this reasonably identifies doubt that the mileage discrepancy must be the result of the key not being used.

In its response to our investigators view LV says:

“The main issue, that we think is being missed is that Mr [H] has provided us with a key that doesn’t work. As the key doesn’t work we’re not sure how he would have been able to drive the car only hours before, the car is then stolen and then the key stops working for no apparent reason. Our concerns are with the validity of the information presented by Mr [H].”

I have seen evidence more recently that shows the key battery had a charge when tested by Mr H. He also points out that the key battery is charged when inserted into the car ignition. I note that LV’s key specialist reported that, *“the remote buttons in the head aren’t working, likely due to a dead battery”*.

This information is conflicting. I think this raises doubt that the battery was flat at the time leading up to Mr H’s claim – preventing him from using this key to drive his car.

I acknowledge LV’s view that the car couldn’t have been stolen without a key. But I don’t think it’s shown that it’s an impossibility for this type of car to be taken without a key. It’s not for Mr H to show how his car could’ve been stolen he only needs to show that he has suffered an insured loss. It’s for LV to demonstrate why its policy doesn’t provide cover.

I have read Mr H’s policy terms. LV has declined his claim relying on the following policy exclusion:

“Loss or damage to the insured car by theft or attempted theft if the ignition key or other ignition device is left in, on or attached to or left in the immediate proximity of the insured car.”

For the reasons I have given, I don’t think LV’s investigations has reasonably shown Mr H had possession of two keys. Or that he left a key in the car, which allowed it to be stolen.

It’s not my role to determine how the theft occurred. My role is to consider whether LV behaved fairly when investigating the claim and that the evidence obtained supports its conclusions. For the reasons I have discussed here I don’t think LV has investigated sufficiently or that it can reasonably decline the claim on the basis it has.

Because of this I think it’s fair that LV reconsiders Mr H’s claim based on the remaining policy terms. For clarity, this doesn’t mean LV must accept the claim, only that it should consider it without relying on the policy exclusion it has.

My final decision

My final decision is that I uphold this complaint. Liverpool Victoria Insurance Company Limited should now:

- reconsider Mr H’s claim based on the remaining policy terms.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 12 July 2022.

Mike Waldron
Ombudsman