

The complaint

Mr H is unhappy Liverpool Victoria Insurance Company Limited (“LV”) declined a claim he made on a car insurance policy when his car was stolen.

What happened

What follows is only intended to be a summary of what I believe to be the main events which led to this complaint. It doesn’t therefore include all of the detail or list all of the events that happened.

Mr H’s car was stolen from outside a friend’s house. He made a claim to LV.

LV considered the claim but declined it. It explained Mr H’s policy had an exclusion where theft claims would not be paid if a key is left inside the car. Mr H had explained he’d hidden a key card (which can be used to start the car) inside the boot of the car. LV’s position is that this could have contributed to the car being stolen so in line with the exclusion it would not pay his claim. Mr H disagreed with LV’s position and made a complaint. He explained the key card was in a Radio Frequency Identification (“RFID”) wallet which in effect blocks the card and therefore means it can’t be used to start the car. He thought the car was most likely stolen by another means such as a “relay theft” where signals from a coded key are amplified and used to open and start cars. LV considered this but wasn’t minded to change its answer.

Our investigator considered the complaint and thought that it should be upheld. He said that although the exclusion permits the claim to be declined, he didn’t think LV had shown how the presence of the key was material to the theft of the car. He recommended that the claim be reconsidered, and Mr H awarded £200 for the trouble and upset he’d been caused.

LV disagreed and asked for an ombudsman to consider the complaint. It said the exclusion was common in car insurance policies and it believed it had declined the claim fairly. It said that Mr H couldn’t confirm the car was locked when he walked away from it and the fact there was a key capable of starting the car left in it, breaches the terms of the policy.

My provisional findings

I issued my provisional findings on this complaint on 6 September 2024. I said I did not intend to uphold the complaint for the following reasons:

- *“My role here isn’t to determine how the car was stolen, simply whether LV has acted fairly and reasonably in its assessment of the circumstances and the application of the terms and conditions of the policy to Mr H’s claim.*
- *Insurers are entitled to decide what level of risk they are prepared to accept and set terms and conditions of policies accordingly.*
- *The policy Mr H has, contains a general condition that says windows and sunroofs should be closed, doors locked, and that the ignition device should be taken when the car is left unattended. ‘Ignition device’ is further defined in the policy as “a key or any other device which is used to gain entry and/or start your car”. The policy further*

goes on to explain that theft of the car will not be covered in certain circumstances including, if it has been left unlocked and if the ignition device is left in, on or attached to the car, or left in the immediate proximity of the car or in a range of where the ignition device is effective.

- A 'keys in car' exclusion is common to many car insurance policies, and I can see it was adequately drawn to Mr H's attention in the Insurance Product Information Document ("IPID") which provides a summary of the cover the policy provides. So I find that LV did make Mr H sufficient aware of this exclusion and its potential impact.
- Mr H said that the car would've locked when he walked away from it. This is not a definitive statement; it suggests that Mr H assumed the car had locked and did not consciously take steps to make sure that was so. He said this in his first call to report the theft to LV. Later, in his complaint to this service, he said that car did 'beep' when he locked it. Generally, I find statements made closer to the event to be more persuasive as they are made in the moment and free from any other consideration or influence. So here, I don't think LV has acted unreasonably in taking Mr H's initial statement at face value. It can't be certain the car was locked when it was left.
- I've considered the fact Mr H has said he didn't receive an 'unlocked' notification to his phone until the morning, which is what led him to discover the car had been stolen. But he has also said that he doesn't sometimes get these if the car is still within range of his phone which he also can use as a key to remotely unlock and start the car. So, I don't find the absence of such notification to be confirmation the car was locked, I think it is still reasonable for a person to check a car is locked when leaving it.
- I understand Mr H's reasons for leaving a key card in the car, whether or not it was an RFID wallet to me isn't relevant, as it simply means it becomes the same as any normal key. If it is found, it can be used to start the car. This is a risk that insurers, and LV in this policy, specifically exclude from cover.
- I acknowledge it is possible the car was in fact stolen by another means, however there is no independent evidence which suggest this more likely than not what happened here.
- Overall, given it can't be confirmed the car was locked and there was a key card inside of it capable of starting the car, means that the terms and conditions of this policy, as well as its exclusion apply to Mr H's claim have been breached. So, I don't think LV have acted unreasonably in applying them.
- I recognise this whole matter has had an impact on Mr H, but as I'm not minded to conclude LV has acted incorrectly. I won't be awarding any compensation to Mr H".

Responses to my provisional decision

LV did not provide any further comments for me to consider.

Mr H responded saying he didn't accept my provisional decision. He thought I may have misinterpreted what he'd previously said.

He clarified his phone was out of range of the car when at his friend's house. So, he should have received an unlocked notification that evening if the car had failed to lock. However, he then goes on to explain, with the make of car he had, it is difficult to be certain if the car has automatically locked, but he hasn't known it not to happen before.

Mr H mentions there was no glass on the floor so either the thieves used a cloned key or other device to open the door, which he considers to be more likely, or the automatic locking failed without him knowing.

Mr H said that if his car hadn't of locked when he walked away it still wouldn't have been

able to be driven. This would have required a key card or remote phone key in an active state. He says the signal of the key card that was well hidden in the car were blocked by the RFID wallet so this wouldn't have been active and therefore the car wouldn't have started. He remains of the opinion that the car was stolen in another way.

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.

I've considered what Mr H has said about the cars locking system. However, having considered all of the evidence available to me, there is no certainty provided that it was locked. Mr H has confirmed himself, that it is hard to tell with that model of car without taking additional steps, which he said that he did not do at the time. Rather he left it assuming it had locked. So, I don't think LV's conclusions here are unreasonable.

I understand Mr H's point about a key card or remote phone key being needed to start the car even if it had been left unlocked. And I accept that would be the case. But this is the same as any other vehicle, it would still need the ignition device available to start the car unless some other method was used.

The exclusion LV has relied on says the theft claim is excluded if the ignition device is in, on, attached to the car or in range of where it is effective. The policy doesn't specify where in the car the ignition device has to be, and I don't think it needs to. It just means if an ignition device is left in the car the exclusion will operate. And here, although hidden, Mr H had left a key card (ignition device) in the car. I remain of the opinion the key card being in the RFID wallet is irrelevant to the exclusion applying – as although it isn't an active state, it is still a key card capable of starting the car if found. So, I think LV is entitled to apply the exclusion.

While I appreciate Mr H believes the key card was not found and the car was stolen by another means, no one can be certain of this. And although I accept that it is a possibility the car was stolen by another means, what I have to consider is whether LV is acting in a fair and reasonable way in declining the claim Mr H has made. An ignition device being in a car is a risk most insurers will not accept, and they will apply an exclusion because of it. Based on all of the evidence and arguments available to me, the circumstances which led up to the theft and given Mr H did leave an ignition device in the car, I think LV has applied the exclusion to Mr H's claim reasonably.

For the reasons given in my provisional decision and those above, I find that LV has fairly and reasonably declined Mr H's claim for his stolen car in line with the terms and conditions of the policy.

My final decision

My final decision is that I do not uphold Mr H's complaint Liverpool Victoria Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 October 2024.

Alison Gore
Ombudsman