

The complaint

Mr and Mrs S's complaint is about the refusal of a claim for theft under their home insurance policy with China Taiping Insurance (UK) Co Ltd ("CTI").

What happened

Mr and Mrs S made a claim under the policy in late February 2019, after they discovered a chainsaw (worth around £300) and two bikes (worth around £1,800) were stolen from an outbuilding at Mr S's father's property, next door to theirs.

CTI refused the claim for the chainsaw. It says the policy only covers items that are kept within the home insured, unless they are personal possessions; a chainsaw would not be deemed to be a personal possession, so would not be covered while not in the home.

The claim for the bikes was also refused, as CTI says the pedal cycle section of cover requires any bikes not being used to be secured to an immovable object or kept within a locked building.

Mr and Mrs S reluctantly accept the position with regard to the chainsaw but are not happy about the refusal of the claim for the bikes. They say the bikes were locked together with several other large bikes. (In some correspondence it says there were seven bikes in total, elsewhere it says five. I don't think it matters how many there were exactly.) All the bikes were attached to each other and were themselves in a restricted space. Mr and Mrs S therefore say the bikes were effectively immovable as a group. In addition, the bikes were locked together using a heavy duty steel cable locks, which had been cut with garden shears. Mr and Mrs S say this could have happened whatever the bikes were locked to and so it is unfair to refuse the claim.

One of our investigators looked into the matter. He recommended the complaint be upheld. He determined that the bikes were in effect attached to an immovable object, as they could not be moved while attached together. The investigator therefore recommended that the claim be reconsidered.

CTI does not accept the investigator's assessment. It says the policy is clear that it only covers theft of bikes kept in a locked building or locked to an immovable object, and so the claim is not covered. It says bikes are not immovable objects and it doesn't matter how many bikes are tethered together, as they could have been lifted if there was more than one thief.

As the investigator was not able to resolve the complaint, it has been passed to me.

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 agree with the investigator that the complaint should be upheld but for different reasons. I will explain why.

Insurance policies, such as this one, do not cover every eventuality or incident which might befall the insured property. Rather, the policy sets out specific incidents which will be covered and in turn this cover may be subject to specified exclusions and conditions. We would generally accept that insurers are entitled to decide what risks they want to cover and which risks they want to exclude.

The pedal cycle section of the policy provides that it will cover a claim for theft of bike but will not pay *“to replace a stolen cycle unless it was locked to an immovable object or kept in a locked building at the time of the theft”*.

CTI has termed the requirements for securing any insured bikes as an exclusion but it seems to me that it amounts to a policy condition; and I note that in its responses to the claim CTI refers to Mr and Mrs S breaching a specific policy condition.

I can see the force of the argument that the bikes were in effect attached to an immovable object, on the basis that seven (or possibly five) of them together would themselves be immovable but I do not consider that this is persuasive overall. I think the policy is sufficiently clear that it means the insured bikes should be secured to a fixed structure of some kind.

However, we have long-held that it is unfair to refuse a claim for breach of a condition which is immaterial to the loss, or has not caused some prejudice to the insurer. This principle has been set out in various guidance since at least 1997 (the publication of the Association of British Insurers Statement of General Insurance Practice); it is set out in The Financial Conduct Authority rules regarding insurance claims handling (ICOBS 8.1); and is also enshrined in the Insurance Act 2015.

ICOBS 8.1 says:

“An insurer must:

8.1.1 (3) not unreasonably reject a claim ...

8.1.2A (1) Cases in which rejection of a consumer’s claim would be unreasonable (in the FCA’s view) include ...

(b) where the claim is subject to the Insurance Act 2015 for breach of warranty or term...unless the insurer is able to rely on the relevant provisions of the Insurance Act 2015

...

(2) The Insurance Act 2015 set out a number of situations in which an insurer may have no obligation to pay. For example ...

(b) Section 11 places restrictions on an insurer’s ability to reject a claim for breach of a term where compliance is aimed at reducing certain types of risk.”

It seems to me the terms CTI is seeking to rely on fall squarely with (2) (b) above – the requirement to place items in a locked building or secured to an immovable object is specifically aimed at reducing the risk of theft

Section 11 of the Insurance Act 2015 says:

“(1) This section applies to a term (express or implied) of a contract of insurance, other than a term defining the risk as a whole, if compliance with it would tend to reduce the risk of one or more of the following-

(a) loss of a particular kind, (b) loss at a particular location, (c) loss at a particular time.

(2) If a loss occurs, and the term has not been complied with, the insurer may not rely on the non-compliance to exclude, limit or discharge its liability under the contract for the loss if the insured satisfies subsection (3).

(3) The insured satisfies this subsection if it shows that the non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred."

What this means in relation to Mr and Mrs S's claim is that while it is a requirement to secure any bikes to an immovable object or secure them in a locked building while they are away from home (to reduce the risk of theft), any failure to do so cannot be reasonably relied on to refuse a claim if the loss would have happened anyway, even if they had been so secured.

In this case, CTI was apparently satisfied with the locks used by Mr and Mrs S. The locks were cut through and it seems to me that would and could have happened regardless of what the two stolen bikes had been locked to. The failure to comply with the policy term, made no difference, as the theft would still likely have occurred.

In accordance with the Act, CTI is therefore unable to exclude or limit its liability under the policy. CTI has not applied its terms fairly when considering this part of Mr and Mrs S's claim. I therefore agree that it should proceed to deal with the claim, in accordance with the remaining policy terms.

I also consider that an additional sum of £100 should be paid as compensation for the distress and inconvenience caused by its unreasonable refusal of the claim.

My final decision

I uphold this complaint against China Taiping Insurance (UK) Co Ltd and require it to:

- meet the claim for the bikes, subject to the remaining terms of the policy; together with interest on any cash settlement at 8% simple per annum from the date of the claim to the date of settlement; and
- pay £100 compensation for the distress and inconvenience caused by the unreasonable refusal of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 3 December 2020.

Harriet McCarthy
Ombudsman