

The complaint

Mrs A has complained about her bicycle insurer Tradewise Insurance Services Ltd because it has declined her theft claim.

What happened

On a Saturday evening, Mrs A put her bicycle in her car. The next day, Sunday, around 9am, she put some other items in the car but then left to deal with an emergency. When Mrs A returned to her car on Wednesday, she found that the back window had been smashed and the bicycle stolen. Mrs A called the police and made a claim to Tradewise. She later found a witness who had seen the theft occur at around 5pm on the Sunday.

Tradewise began reviewing the claim straightaway, and whilst it was still deciding on policy liability it also discussed with Mrs A what a likely settlement might be. Tradewise then declined Mrs A's claim as it felt that, in line with the policy terms, the bicycle had been abandoned at the time it was stolen – meaning the theft wasn't covered. Abandonment being defined in the policy as:

“when a pedal cycle is left in a location other than the insured location for more than 18 consecutive hours...” (the insured location being, essentially, within a property, not a vehicle).

Mrs A was unhappy about this. She felt that as Tradewise had told her what the claim settlement would be, its choice to suddenly decline the claim was unfair. She surmised this might have been driven by discrimination. She said the term for abandonment had not been drawn to her attention when the policy was sold and it was subjective, reliant on what the intent of the policyholder was. Mrs A argued that she had seen the bicycle on Sunday morning so it had only been left in the car for a matter of hours before it was stolen on Sunday evening, and she had always intended to return but the emergency kept her away.

Tradewise denied the allegation of discrimination. It said it had declined the claim on a fair assessment of the situation against the policy terms. It noted Mrs A no longer had the bicycle and told her she could cancel the policy if she wished (for a pro-rated refund with no cancellation fee) – or if she replaced the bicycle the cover could be transferred. Mrs A wasn't sure what to do as she thought no longer being a customer of Tradewise might prevent her from complaining. Mrs A complained to us but she didn't replace the bicycle and the policy lapsed at renewal before our investigator issued her view on the complaint.

Our investigator didn't think Tradewise had discriminated against Mrs A. But she did feel that the claim outcome was unfair and unreasonable. She said this was because the definition of abandonment was not that used in normal parlance. She also felt that Mrs A seeing the bicycle whilst packing the car on Sunday morning had likely changed the risk which the policy term relied on by Tradewise had been intended to protect it against. She felt Tradewise should accept and deal with Mrs A's claim.

Tradewise objected to the findings. It said the policy definition was standard for the type of cover in question, that Mrs A had been asked to agree to the terms and conditions at the point of sale – but that the policy had a cooling off period too.

The complaint was passed to me and I didn't think it should be upheld. Tradewise replied stating it had nothing further to add. Mrs A objected to my findings.

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 said provisionally:

“Tradewise was likely responsible for the sale of this policy – being completed as it was by an intermediary which Tradewise underwrites policies for. But I don't see that any failing occurred during the sale. Mrs A had the opportunity to read the terms if she wished – but it isn't unusual for purchasers to not see or be told of every term during the application and acceptance process. This policy came with a cooling off period so even after the sale had completed, Mrs A did have the chance to check the full terms and cancel if she wished.

Whilst we wouldn't expect every term to be communicated during a sale, any that are significant and unusual should be highlighted. I'm not persuaded that the term and definition relied on by Tradewise here are either significant or unusual. Overall they relate to a small part of the cover for certain circumstances prevailing during a theft – so they don't impact the cover as a whole. And many insurance policies seek to restrict the circumstances of theft for which the insurer will be liable – with abandonment being a fairly common part of that. Definitions will vary between insurers but, in regards to abandonment, insurers will usually seek to apply a time period for an item being left. I've seen cover which sets that at 12 hours, whereas as Tradewise applies a more generous 18.

So Mrs A bought a policy where Tradewise did not need to highlight the terms regarding theft and abandonment to her and where she'd had the chance to consider the policy terms and conditions. I'm satisfied then that Tradewise didn't fail Mrs A during the sale of the policy and it was reasonable for it to take the theft term and abandonment definition into account when considering Mrs A's claim.

According to the policy, theft claims will only be covered if the bicycle is not abandoned. Tradewise has chosen in its policy to define what it means by “abandoned” (quoted in my background above). As long as an insurer is clear about what terms are defined, and the definitions given are clear, we'll usually let an insurer rely on those. We likely wouldn't if they were felt to be significant and unusual with the insurer having failed to draw them to the policyholder's attention – but I've dealt with that above.

I think the definition is generally clear – but I've considered specifically the concerns Mrs A has raised in this respect. Mrs A says the definition is not clear because it requires the insurer to determine the intent of the policyholder – but also because it doesn't give a start or end time. I don't think the definition does refer to any intent. If an item is left, it is left, regardless of any intent to return. And I think the definition is also clear that the timeframe starts at the point the item is left and ends 18 hours later.

I know Mrs A saw the bicycle in the car on Sunday morning, having left it in the car the night before. But Mrs A hasn't suggested that, on Sunday morning she took the bicycle out of the car, before putting it back and leaving it there again. I don't think I could reasonably say that Mrs A merely seeing the bicycle in the car interrupted the period over which the bicycle was

left in the car. And nor do I see that Mrs A, having been around and in the car on Sunday morning, then reduced the risk presented by the bicycle having been left in the car for an extended period – starting the night before and continuing beyond the 18 hours allowed for by Tradewise's definition. I think Tradewise's decline of the claim, on the basis of the theft term and abandonment definition, was fair and reasonable.

I appreciate that it must have been upsetting for Mrs A to think this claim was going to be covered, only for it to be declined. I think Tradewise was trying to expedite her claim with the best of intentions – but that lead to an unfortunate loss of expectation when it was decided that the claim would not be settled. But I don't think Tradewise ever misled Mrs A in this respect. Tradewise did not say to Mrs A, for example, that her claim was accepted. The communication I've seen clearly shows that whilst Tradewise was discussing the theft and possible settlement with Mrs A, it was also asking her more details about the circumstances of the loss. Tradewise has said it will learn from the upset which occurred here and I think that is a reasonable response in the circumstances. But because I'm not persuaded that Tradewise misled Mrs A, I'm not going to require it to pay her compensation.

I note Mrs A is concerned that she continued to pay for cover following the theft of her bicycle – Tradewise was getting money for a policy she could no longer have benefit from. But I also note that Tradewise had offered to cancel the cover and refund the unused portion of the premium if Mrs A asked it to. I haven't seen that Mrs A has done this, or that a complaint has arisen because Tradewise has now refused to honour that offer. If Mrs A wants a pro-rated premium refund, she should revert to Tradewise in the first instance."

In response Mrs A maintained her view that the definition of abandonment is vague as it requires a degree of interpretation to know what is meant because it doesn't explain what is meant by 'left'. And her bike was stolen within 18-hours of her opening her car, seeing her bike and leaving it there.

I explained provisionally why I felt the term was clear. But, it may help Mrs A if I explain that it is not unusual for an insurer to use everyday language at times in their policies. And where they do that, and chose not to give a different, extended or more specific meaning to that word, they don't have to set out a definition, or explanation of what is meant. If they did then policies would be cumbersome and confusing.

I'm satisfied that most people generally understand that an item is left somewhere when it is placed in a certain position and the person who placed it walks away. But that person, seeing that item later whilst doing nothing with it, does not break that chain of that item having been 'left'. So I can place my tea cup in the kitchen after breakfast and see it when I walk through the room at lunchtime but would still think of it on the evening as it 'having been left there since breakfast'. But if I pick that cup up at lunchtime, even if only briefly, then that act breaks the period of when it was left. As I said provisionally, Mrs A seeing her bike in her car on Sunday morning did not break the period of it being left in the car, which began the night before.

Mrs A also said she felt Tradewise should have acted to discuss with her the recommendation of our investigator's view.

I realise Mrs A would have been hopeful of a swift resolution following our investigator's view. But Mrs A had asked us to consider her complaint and there is a process to that. The parties can choose whether or not to accept the investigator's view. Tradewise wasn't minded to agree to it. That was its right.

It is regrettable that, on this occasion, Mrs A has been left without a remedy for her loss. Unfortunately for Mrs A, having reviewed matters again, I'm not persuaded to change my

view on the outcome of her complaint. My provisional findings remain unchanged and now form part of this, my final decision.

My final decision

I don't uphold this complaint. I don't make any award against Tradewise Insurance Services Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 8 January 2021.

Fiona Robinson

Ombudsman