

The complaint

Miss F complains that Society of Lloyd's unfairly declined a motorbike theft claim.

What happened

Miss F purchased an off-road motorcycle in 2019 and insured this with a Lloyd's underwriter, storing the bike in a building on her parent's property nearby.

In July 2020, she was contacted by DVLA to advise that someone had contacted them to register their ownership of the bike. On hearing this, Miss F went to her parent's house, to find the bike had been stolen from the storage building. Miss F registered the theft with the Police, and with Lloyd's.

Lloyd's refused Miss F's theft claim, stating no evidence had been provided to show there had been any violent and forcible entry to the building where the bike was stored. Lloyd's referred to a policy endorsement relating to the need to have kept the bike in a locked building, and to a policy exception concerning whether there was evidence of a forced entry or exit to the building. Lloyd's commented there was no sign the building had been padlocked, and no sign there had been any forcible and violent entry.

Unhappy with this, Miss F brought her complaint to us. However, our investigator thought Lloyd's had applied the policy exclusions fairly in declining Miss F's claim. So, Miss F asked for the case to be considered by an ombudsman. And it's now been passed to me.

My provisional decision

I issued a provisional decision on 10 January 2022 upholding Miss F's complaint, saying as follows:

"The relevant terms and exclusions of Miss F's policy which I'll need to consider are:

Definitions

- *Theft - Theft or attempted theft caused by forcible and/or violent means*

Your Obligations

- *You must ensure that your motorcycle is locked and all security requirements, stipulated as part of the insurer providing the cover to you, must be adhered to.*

General exclusions – What is not covered – general exceptions

- *Loss or damage to your motorcycle where the security requirements have not been adhered to*
- *Loss or damage to your motorcycle resulting from theft or attempted theft unless it involves forcible or violent means and a crime reference number was obtained from the Police.*

- The vanishing of your motorcycle in an unexplained manner where there is an absence of evidence of a wrongful act by a person or persons including, but not limited to, where there was no direct evidence of a forced entry/exit to the risk address, there is no direct evidence that your motorcycle was stolen.

Policy Schedule – Endorsement Descriptions

- You have agreed that you will keep your motorcycle in a locked garage or building at the risk address declared to us. If a theft or attempted theft happens and the motorcycle is not in a locked garage or building, the insurer will not pay any claim you make for that theft or attempted theft.
- Your motorcycle must be securely locked to an object that cannot be moved using a motorcycle D-lock, U-shackle or padlock and chain. If you do not do this the insurer may not deal with your claim.
- Your policy will not be operative in respect of theft or attempted theft of your motorcycle unless, at the time of loss:
 - o your motorcycle is secured by a Thatcham Category 3 or Sold Secure Gold rated D-Lock, U-Lock, Shackle Lock or Chain Lock and;
 - o your motorcycle is secured by a Thatcham Category 3 or Sold Secure Gold Rated wall or ground anchor (and Thatcham Category 3 or Sold Secure Gold Rated chain lock where this is required and not supplied as part of the wall or ground anchor) when at the risk address.”

It's not in dispute between the parties that Miss F's bike was taken from the building where it was stored, without Miss F's knowledge. She only found out about this some weeks later when the DVLA contacted her about a change of ownership. Miss F duly reported this to the police. The issues for me to consider here are whether Miss F complied with the terms of her insurance policy in relation to the storage/security of her bike. And whether Lloyd's considered those terms fairly when deciding to decline Miss F's claim.

Firstly, I'm satisfied that Miss F's bike was secured by an appropriate ground anchor and chain. Photos have been provided to both Lloyd's and this office showing the chain had been cut. And Lloyd's have made no mention in their final response challenging this aspect of the bike security.

But Miss F's policy says she won't be covered if her bike is stolen from a building that isn't locked. In this case, there was no visible evidence, after the theft, that the building had been locked. There was no damaged/broken padlock on the ground, and no obvious damage to the lock/hasp on the door of the building. Miss F has provided a report from a locksmith, with photos, to show how it would have been possible to break a padlock without damaging the hasp. I appreciate what Miss F is attempting to show here, but this alone doesn't prove the building was locked.

However, I've listened to the calls Miss F made when reporting the theft to the Police, and to Lloyd's when she first notified them of the theft. These were made immediately after she became aware of the theft, and in both she is clear and consistent when mentioning that the thieves must have broken the padlock to gain entry. This was her testimony 'at the time' and so I think would have reflected what she genuinely believed regarding the level of security on the building. I'm persuaded by this testimony given its timing and consistency. So, on balance, this leads me to conclude it was more likely than not the building was indeed locked.

I also need to consider the ‘What is not covered – general exception’ Lloyd’s have relied on in their final response – “The vanishing of your motorcycle in an unexplained manner where there is an absence of evidence of a wrongful act by a person or persons...”

Here, I don’t think Miss F’s bike wasn’t taken in an unexplained manner – it was removed from the storage building, using force (on entry – as above), and there is clear evidence of a wrongful act to facilitate that (the violence when the chain was cut). In other words, Miss F’s bike does appear to have been taken in a manner that is/was explained, using force. There is an explanation. That being the case, I don’t think Lloyd’s can rely on this exception to refuse Miss F’s claim.

Furthermore, addressing Lloyd’s final response assertion that there wasn’t any evidence of “violent and forcible entry”, I refer to relevant caselaw, and in particular the “Calf -v- Sun Insurance Office” case – the relevant judgement text being as follows:

“that by the words “actual forcible and violent entry” it was intended to mean an entry effected by the exercise of force in a manner that was not customary in order to overcome the resistance of the usual fastenings and protections in the premises. If a person turns a key he uses force but not violence. If he uses a skeleton key, he uses force but not violence. If on the other hand instead of using a key he uses a pick-lock, or some other instrument, or a piece of wire, by which as a lever he forces back the lock, it appears to me that he uses force and violence, and in the present case both force and violence were used.”

It’s clear from this judgment – and reflects our usual approach in such cases – the mere act of opening a door will constitute an act of ‘force’. And this is what happened here. The thief would have needed to open the steel door via the covered hasp – and would have had to use ‘force’ to do this. There is no requirement for ‘violence’ to have been evident when accessing the building where the bike was stored. The relevant exclusion is clear only ‘force’ needs to be evident – “where there was no direct evidence of a forced entry/exit to the risk address”.

So, having considered all the above, I’m satisfied the policy exclusions relating to the storage and security of Miss F’s bike don’t apply here. I’m satisfied the building where the bike was stored was more likely than not locked, that force was likely used to gain entry through the substantial steel door to the building, that violence was used to cut the lock in the act of the theft, and that Miss F’s bike didn’t vanish in an ‘unexplained’ manner.

So I’m satisfied Lloyd’s are unable to fairly rely on the exclusions within Miss F’s policy to refuse her theft claim, which I think they should now settle in accordance with the settlement terms of her policy. And if Miss F has paid to replace her bike, Lloyd’s will need to pay her 8% simple interest on the amount she paid (up to the assessed value of this stolen bike), calculated from the date she purchased any replacement bike to the date of settlement.

I also think Lloyd’s should pay Miss F £125 to compensate for the distress and inconvenience Miss F has experienced in recognition of the difficulties she’s encountered bringing this claim.

Response to my provisional decision

Miss F has responded, and confirmed she has nothing further to add. Lloyd’s responded and have explained they don’t accept my provisional findings.

Lloyd’s have repeated a point they’ve made before, namely there is no evidence of any damage to the hasp. They believe it would have been impossible to cut any padlock that was

protected by the hasp without causing visible damage to it – and as such the absence of any damage most likely means there couldn't have been any padlock there in the first place.

Lloyds also refer to the photos Miss R provided. They suggest these pictures show the hasp/lock is of such a size there isn't even enough room to allow a sawing blade to access and cut a padlock. And importantly, a *locked* storage unit is a condition of the policy and, given the above comments Lloyd's believe there is insufficient evidence to show Miss F's unit was indeed locked.

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 do fully appreciate what Lloyd's are saying here. I agree there is no visible damage to the hasp, and that the 'space' to cut any lock is limited. But I'm not persuaded it's *impossible* to have accessed and cut any lock that existed. Miss F submitted the photos to Lloyd's primarily to show there was space within the hasp to allow cutting access, and I'm satisfied these photos do show this. They show the spaces are big enough for cutting machinery to access, both hand-motion and small rotary electric.

Which brings me to the question of whether there *was* a lock on the door – which I agree is a key policy condition here. As I've said in my provisional decision, I'm persuaded by Miss F's testimony when she first reported the theft to the Police and to Lloyd's. She makes clear reference to the lock having been cut in both calls – calls made 'in the moment'. I have no reason to doubt the accuracy or honesty of Miss F's account in either of these calls. So, I'm satisfied the storage unit was more likely than not to have been locked.

So, taking all of the above into account - and given Lloyd's haven't raised any further points in response - I uphold Miss F's complaint and require them to settle Miss F's claim, and pay compensation for distress and inconvenience, in the manner set out in my provisional decision above.

And if Miss F has paid to replace her bike, Lloyd's will need to pay her 8% simple interest on the amount she paid (up to the assessed value of this stolen bike), calculated from the date she purchased any replacement bike to the date of settlement. In this event, Miss F will need to provide Lloyd's with evidence of the bike purchase, showing the date paid, the amount paid, and that she used her own funds for the purchase.

My final decision

I uphold Miss F's complaint against the Society of Lloyd's and require them to do the following:

- Settle Miss F's claim in accordance with the claim settlement terms of her policy.
- If Miss F paid to replace her bike, pay her 8% simple interest on the sum as calculated above.
- Pay Miss F £125 to compensate for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 22 March 2022.

Mark Evans
Ombudsman