

The complaint

A company, which I'll refer to as J, complains that Covea Insurance plc ("Covea") declined a claim made on its 'Tradesman & Professionals' commercial policy.

Mr D, a director of J, has complained on J's behalf.

What happened

In 2020 J took out a 'Tradesman & Professionals' policy with Covea. The policy covered J for employers, public and products liability – as well as insuring its contract works, and any 'plant' (machinery) that was owned or hired. An endorsement was applied to the 'own or hired plant' section of the policy that said theft of any property, while unattended between 1800 and 0600 hours and during weekends, wouldn't be covered unless it was either kept in *"a fully enclosed yard or compound which is securely closed and locked or under constant surveillance"*.

One of J's vans was stolen from a hotel car park in September 2020. The van was fitted with a tracking device and was later found – but the tools and small plant that had been inside it at the time of the theft weren't recovered. J made a claim on its policy for the stolen plant and tools, which was declined by Covea in April 2021 for not meeting the requirements of the 'unattended theft' endorsement. In particular it said J's insured property hadn't been under constant surveillance at the time of the theft.

J raised a complaint and argued that the hotel car park having closed-circuit television (CCTV) cameras meant the requirement for the van to be under 'constant surveillance' had been met. Covea's response said it had contacted the hotel, who confirmed the CCTV wasn't continuously watched by staff – and therefore it didn't believe J had complied with the term.

Unhappy with the response, J referred things to our service for review. An investigator here considered everything and didn't uphold the complaint. In his view, the CCTV not being monitored meant it didn't meet the requirement of being under 'constant surveillance'.

J didn't accept the investigator's view, and so the complaint was passed to me for a decision on the matter. I issued my provisional findings on 9 February 2022, which said I intended to uphold the complaint. I've copied below an extract of it which explained my rationale:

"CCTV involves cameras continuously monitoring or watching an area. It's otherwise known as 'video surveillance', and so the use of the word 'surveillance' in this policy I consider immediately brings CCTV to mind. The car park in question here had CCTV, so it was under constant surveillance – just by cameras, and (as it turned out) not a person. I've carefully considered the term, and both parties' comments, and I'm persuaded that J's interpretation (that CCTV would satisfy the requirements) was a reasonable one. Having that in place would be a deterrent, and criminals wouldn't know for sure whether or not it was constantly monitored. I also don't think J would have left things in the van if it had believed the tools and plant would be at risk in the car park."

J says it rang ahead to check what security measures were in place at the hotel and was told the car park was monitored by CCTV. Based on that it was satisfied the van would be safe and the contents covered by its insurance policy. The insurer intended that the 'constant surveillance' involved a person – either watching the cameras or patrolling the car park. But it hasn't said that in the policy. 'Constant surveillance' also isn't otherwise defined in the terms – though, by contrast, the meaning of 'fully enclosed yard or compound which is securely closed and locked' is expanded on, with lots of detail given on the acceptable height and type of fencing, along with what it considered to be sufficient locks.

I've considered Covea's comments about why unmonitored CCTV, in its view, does not qualify as 'constant surveillance'. However, I've reviewed the relevant endorsement wording on the policy, and thought about what a fair and reasonable interpretation would be in this particular case. For the reasons given above, I'm satisfied that constant surveillance would reasonably be interpreted as including CCTV. Given all theft cover is removed if the term isn't complied with, I'm not satisfied it's fair and reasonable to turn down this claim because the CCTV wasn't continuously monitored – as that wasn't stipulated by the insurer. I appreciate J is a commercial customer, but it isn't an expert on insurance and risk. So if Covea didn't want to cover a certain risk then I consider it needed to be clearer in its wording. J would have made other plans if it had been. Therefore I'm minded to uphold the complaint and say the decline is unfair in the circumstances of this case.

As mentioned earlier, the damage to van wasn't covered, nor were any tools – only equipment meeting the definition of 'plant'. So Covea should now deal with the claim, to see whether anything stolen from the van was covered under the policy, setting aside the unattended theft exclusion it cited previously as the reason for declining it. J has alleged it lost earnings as a result of the claim not being covered and the plant not being replaced in 2021. In order to consider that loss I would need to see evidence J couldn't afford to replace it at the time or make alternative arrangements, as that would have been a reasonable step in order to mitigate its losses. So, unless J is able to provide further information to support its losses, I consider the fair and reasonable outcome would be for Covea to add 8% simple interest per annum to any amount it pays. It should calculate this from the date of the claim to the date it makes payment, to compensate J for not having the money."

Covea didn't respond by the deadline. J said it accepted what I'd said in my provisional decision but added some further comments about its lost earnings. Mr D told us that J had suffered some losses as a result of the stolen tools not being replaced – but wasn't able to provide any supporting evidence. He said the affected clients had been approached to help with the proof required but they were unwilling to assist due to J not finishing the jobs.

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'm upholding this complaint – and for the same reasons I gave in my provisional decision. Covea offered no further arguments, so I see no reason to depart from the rationale I've set out above. As I'm not satisfied the decline was fair and reasonable in the circumstances, Covea should now consider the claim for any plant stolen from the van – setting aside the 'unattended theft' exclusion it cited previously as the reason for declining it.

I've thought about J's response, in respect of its lost earnings – and firstly I note that Mr D referred to stolen tools, but any 'tools in transit' weren't covered under the policy (just equipment meeting the definition of 'plant'). Secondly, in order to direct Covea to pay for J's financial losses, I'd need to see some evidence in support of them.

I'd also have to be persuaded that any profits lost from jobs not completed, or not able to be taken on, were the direct result of the unfair decline of the claim – rather than due to the theft itself. The plant in the van might have been needed for a job when it was stolen, but a claim would have always taken time to validate and settle. So any jobs lost in that time wouldn't be Covea's fault. Additionally, I'd need to be satisfied that J couldn't have hired in or replaced the plant sooner – to prevent those jobs being lost.

I appreciate it's frustrating that J's clients didn't want to help with providing proof of lost earnings. But if jobs had been booked in (and subsequently lost) then I'd expect J to have some evidence of that without needing to involve other parties. So, having not seen any additional evidence to otherwise quantify the lost earnings, I'm not directing Covea to pay out anything in that respect. Overall, I still find that adding 8% simple interest per annum onto any settlement amount, will fairly compensate J for the time it will have been without that money, and the delay caused by the unfair decline.

My final decision

My final decision is that I uphold J's complaint about Covea Insurance plc, and direct the insurer to:

- Consider the claim for any stolen plant, setting aside the 'unattended theft' exclusion, and then settle it in line with the remaining terms of the policy.
- Add 8% simple yearly interest onto any settlement amount, calculated from the date the claim was made by J up until the settlement is paid by Covea.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 8 April 2022.

Ryan Miles
Ombudsman