

## **The complaint**

Mr G has complained that QIC Europe Ltd ('QIC') declined a claim under his home insurance policy following a break in at his home.

## **What happened**

QIC appointed a surveyor to inspect the damage. The surveyor confirmed the damage, however he couldn't confirm whether the key had been left in the inside lock at the time of the break in. He confirmed that there was no damage to the frame or evidence of forced entry. The surveyor confirmed that the door had been damaged beyond economical repair and a full replacement door was required.

QIC nevertheless declined to pay the claim as they stated that Mr G hadn't complied with the policy terms and conditions as to security of his property. Following a complaint by Mr G, QIC maintained its stance and he therefore referred his complaint to our service.

Our investigator upheld Mr G's complaint. She noted that the policy terms and conditions excluded cover if certain security conditions weren't met. She said that it was evident that after smashing the window panel in the door, the thief/thieves had somehow been able to gain access to the property by reaching the keys. She said that it was uncertain whether the keys were in the door or by the door. She concluded however that the keys were within reach or sight.

As to any stolen contents, our investigator concluded that there had been a breach of the policy exclusion and that QIC had applied this exclusion fairly and reasonably. However, the investigator considered the remaining question was whether there was cover for damage to the door only. She was of the view that the exclusion provision would operate unfairly if QIC relied upon it in that respect.

Our investigator stated that as the window panel was frosted, the intruder(s) wouldn't have seen the keys. She considered that declining this element was unfair and that the damage to the door was not related to compliance or otherwise by Mr G of the lock condition. In her view, the damage to the door was an unforeseen event and would have occurred irrespective of whether Mr G complied with the security condition.

Finally, our investigator stated that our service considers if insurers' terms and conditions are fair. If a term was onerous or unusual, it would be appropriate to say it can't be applied in certain circumstances. She concluded that the exclusion provision was unfair in the circumstances of this case and that QIC should cover the cost of door replacement.

QIC is unhappy with the outcome and the matter has therefore been referred to me to reach a final decision in my role as Ombudsman.

## **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.

The central issue for me to consider here is whether it was fair and reasonable for QIC to rely on the security exclusion clause in its policy and to decline this claim. I uphold Mr G's complaint in relation to damage to the door of his property for the following reasons.

My starting point is the terms and conditions of the policy which Mr G purchased from QIC. Firstly, Mr G is covered in principle by his QIC policy in the event of a theft at his home. The relevant provisions are as follows.

Under the heading '*Theft or attempted theft*', the policy states that '*we will cover loss or damage: caused by theft or attempted theft following forced and violent entry to your home...*' It does however also state that; '*we may require you to have minimum security in place. Please check your policy for any specific endorsement.*' Under the heading '*Malicious damage or vandalism*', there is also separate cover for '*loss or damage caused by malicious people or vandals*'.

Mr G's policy schedule states under the heading '*Theft and malicious damage excluded if security requirements not met*'. It then states that this provision applies when there is nobody home or the residents have gone to bed for the night.

The schedule goes on to state that '*you must*; -

- a. remove keys from all locks and keep them out of sight or reach of a potential intruder; and*
- b. ensure that the locks declared in your insurance application are put into full and effective use.*

It also states; - '*We will not pay for loss or damage caused by any theft, attempted theft...or malicious acts...unless you meet both requirements (a) and (b).*'

I'll now turn to the information and arguments which each party has provided. Mr G stated that the keys were usually left on a surface to the side of the door and under a cloth. He says that the window panel was frosted, and the intruder(s) would only see the keys after the door was broken. He said that he's been made to feel like a criminal and a liar. He said that '*the fact of this is my back door was smashed in by a burglar (keys or no keys) and he has gained access to my property smashed my alarm and stole a load of stuff*'.

In his response to the QIC final response letter, Mr G stated the following about the thief/thieves. He '*would hasten a guess that they are probably an opportunist who have smashed my door in (through frosted glass also shown in the photo) and have somehow hooked some keys*'. The QIC case-notes also indicate that the property had a security alarm system and camera in place.

QIC stated that it had contacted Mr G following his claim to clarify where the keys were located at the time of the break in, as the photograph which Mr G had sent showed the key in the lock. It's case notes show that initially, Mr G said they could have been in the lock, however then subsequently said this wasn't the case. QIC referred to the report of its surveyor as follows; '*there was no damage to the frame or sash to show that forced entry was made via jemmying the door*'. It thought that the photographs showed that this was isolated damage to the window panel. As there was no other damage to the door to indicate

another form of entry, it considered that entry occurred following non-compliance with the terms of the policy.

It stated that the damage to the door was; - *'isolated entirely to the section of the glass door panel which corresponds with the location of the handle and door lock'* and that the intruders wouldn't have been able to gain access through a hole of that size in the glass. It said that either the keys were in the lock or the locks hadn't been fully engaged. As such it considered that the policy exclusion applied and refused to pay for any loss or damage.

QIC thought that even if Mr G's interpretation of how the intruder(s) located the keys was correct, these circumstances would also constitute breach of the terms of the endorsement which stated that the keys should be removed from all locks but that they should also be kept *'out of sight or reach of a potential intruder'*.

It said that the explicit exclusion provision made it clear that it applied not only to loss, but also damage, such as that caused to the door. It said that such damage wouldn't be covered if caused by a theft or attempted theft unless the requirements in (a) and (b) above were met. It considered that they weren't met.

I've carefully considered the available evidence and the arguments of both the parties and the wording of the relevant exclusion clause. Firstly, on the facts, due to the limited extent and type of the damage to the window panel in the door, there appears to be no dispute that the intruder(s) could only have entered Mr G's home by reaching the keys, either in the lock or on a surface near to the door.

I'm satisfied that it was fair and reasonable for QIC to apply the exclusion in its policy to any stolen items within the home. This was due to the engagement of clear, standard and proportionate wording in such circumstances. Despite the apparent security measures in place, all reasonable and specified steps hadn't been taken to secure the contents of Mr G home. Leaving a key in, or close to, the door lock allowed an opportunist thief/thieves to access the home. In the circumstances, I can't say that QIC applied the exclusion clause unfairly and unreasonably as regards the theft of any items within the home.

As to damage to the door however, on the balance of probabilities, an opportunist thief/thieves would have had no reason to believe that there would be a key within easy access of the door until the window was smashed. The key wouldn't have been visible through the heavily frosted glass and it also appears from QIC's case notes that there were other security measures in place.

On the balance of probabilities, I consider that Mr G had met condition (b) of the exclusion clause; - *'ensure that the locks declared in your insurance application are put into full and effective use'*. The fact that the window panel had been broken indicates that the door was locked as it's likely that the intruder(s) would first have tried to gain entry by the simplest available method (that is, opening the door) before breaking the window.

As to condition (a) of the exclusion clause; - *'remove keys from all locks and keep them out of sight or reach of a potential intruder'*, the key was out of sight from external view. The photographs show that the window panel was frosted, and the door was a modern door in apparently good condition. It was also out of reach until the window panel had been broken. I can appreciate that it could be fair to rely upon an exclusion clause of this nature in other circumstances. Such examples are where there was a flimsy or transparent window panel where the key was visible inside the property, or where a key had been left outside within reach, such as above a door lintel. This is not the case here.

Even if the key had been left in the lock, outwardly, it is fair to conclude that the property was secure with no indication that security had in any way been compromised. I agree with our investigator in the circumstances that, *'An opportunist thief/thieves would have always smashed the glass irrespective of whether they were successful in entering the property.'* I therefore agree that, the exclusion provision would operate unfairly if QIC could rely upon it here. This is reinforced by the fact that the policy covers Mr G for malicious damage, which is not dependent on the security provisions of the policy.

I conclude that it would be unfair and unreasonable for QIC to rely on this provision to exclude damage caused during an attempted theft in these specific circumstances. QIC's surveyor considered that in his/her professional opinion, a replacement door rather than repair of the window panel was required. In the circumstances I consider it fair and reasonable that QIC should cover the costs incurred for replacement of the door and the initial boarding up of the property to make the property safe.

### **My final decision**

For the reasons given above, I uphold Mr G's complaint and require QIC Europe Ltd to; -

- Pay the costs for replacing the door
- Pay for the costs incurred in boarding up the window panel

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Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 3 May 2022.

Claire Jones  
**Ombudsman**