

The complaint

Mr G complains that Hiscox Insurance Company Limited (“Hiscox”) declined a claim he made on his home insurance policy for a stolen bicycle.

What happened

In July 2021 Mr G called the police to report a break in at his property. He reported various items were stolen including an expensive bicycle. Mr G also put a claim in with his insurer, Hiscox, as he had cover specifically for the bicycle. Initially he told police that a former tenant could have used a spare key – but the lettings agent later confirmed that all keys were accounted for. The crime scene investigator, according to Mr G, said the most likely way entry had been gained was through a method known as ‘lock slipping’.

Hiscox declined the claim, saying there was no evidence of forced or violent entry to Mr G’s property – which was one of the policy’s exclusions. It also said the police report didn’t make any reference to lock slipping. Mr G raised a complaint but Hiscox maintained its position – so he referred things to us for review.

An investigator here considered everything and didn’t think Hiscox had acted fairly by declining the claim. In his view, the lock slipping method seemed the most likely way the thieves had got in. He also referenced the courts’ interpretation of ‘forced or violent entry’ as entering a property ‘in a way that was not customary’ – which he thought was the case here, though there was no visible damage.

Hiscox didn’t agree, and said that it didn’t think entry had been gained both forcefully and violently – as it believed there would be some damage evident if that had been the case. The insurer also pointed to the policy wording that required normal security protections to be fully operative and in force for the claim to be covered. As Mr G hadn’t deadbolted one of his doors Hiscox thought that term hadn’t been satisfied. The investigator maintained his view that the use of force and violence wouldn’t necessarily cause damage. He also thought normal security measures were in place, as both doors were shut and locked at the time.

As no agreement could be reached, the case was passed to me for a final decision.

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 Mr G’s complaint and for much the same reasons as the investigator gave.

Hiscox has referenced another decision, where the ombudsman said evidence of damage would have been expected if there had been a violent entry in the circumstances of that case. Ombudsmen’s decisions are made on the individual facts of a particular complaint. They can’t set precedence, unlike court rulings. The courts have considered the question of what constitutes forced and violent entry in a number of cases – and I’ve reviewed the

relevant case law. One important judgement said both force and violence could be involved where entry was gained 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”*. Our approach is in line with the courts, and means that if a thief has used a picklock or some other instrument to unlock a door we’d usually consider that to be ‘violent’ – even if it resulted in no physical damage. That’s because a level of force over and above what would usually be necessary has been used. I’ve applied that approach to the facts of this case.

The insurer has said there are other equally plausible scenarios, apart from lock slipping, that could account for the theft – such as the door to the property being unlocked at the time of the incident. But I find it less likely that *both* front doors, which lock automatically when shut, were left open by Mr G. I also find it’s less likely, given he moved into the property in 2018, that a previous tenant waited that long before attempting re-entry with a retained key. In the circumstances I see no reason to doubt Mr G’s recollection of what the crime scene investigator told him – particularly as the types of locks on his doors are more susceptible to being ‘slipped’. That method wouldn’t usually cause damage to the door either.

As the term covering ‘forced and violent entry’ is an exclusion in the policy, it would be for the insurer to show it applies. I appreciate the terms try to place the onus back onto the policyholder – but I consider Mr G has shown as far as he reasonably can that an insured event took place. In this case, I don’t agree there are other equally plausible explanations. Going by what the police have said, I’m satisfied there was a theft – and I find the lock being slipped to be the most likely way entry was gained. I deem that qualifies as forced and violent entry, as it was gained by a manner not customary and with force above what was usually necessary. So I don’t consider that exclusion has been fairly applied by Hiscox in the circumstances.

Hiscox has said the deadbolt not being used at the time of the theft meant normal security protections weren’t fully operative. The terms don’t elaborate on what the insurer considers to be ‘normal’ security measures – I’ve only seen mention of the dwelling needing to be built of brick, stone or concrete and roofed with slates or tiles. Mr G wasn’t asked about the security measures at the property either, before the risk was accepted, and there weren’t any endorsements on the policy stipulating which locks must be used. So I’ve applied my own judgement of what I consider would amount to normal security measures, and reasonable care, in the circumstances.

Having thought about it carefully, on balance I find that two doors, each locked, amounted to a normal level of security and reasonable care in the circumstances. Therefore Hiscox, to my mind, hasn’t sufficiently established that exclusion should fairly apply. The deadbolt was also on the inside door, and once through the first door I doubt the thief would have been deterred by it, even if it was engaged. That’s because the inside door was mostly glass panels with a wood frame, so it could have been quickly breached – whilst the thief remained out of public view. So I’m not persuaded it being locked would have prevented the loss here.

I can’t see any other reason why the claim wouldn’t be covered by the policy, and Hiscox hasn’t made that argument. So, for the reasons given above, I’ve decided Hiscox unfairly declined Mr G’s claim – and so the insurer should now settle it in line with the remaining terms. To compensate Mr G for the delay in paying out on the claim, Hiscox should add 8% simple interest yearly onto any settlement amount. That interest should be calculated from the date the claim was first raised, until payment is made. If Hiscox considers that it’s required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr G how much it’s taken off. It should also give Mr G a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is I uphold Mr G's complaint about Hiscox Insurance Company Limited, and direct the insurer to settle the claim in line with the remaining terms – and pay interest on the settlement amount as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 22 November 2022.

Ryan Miles
Ombudsman