

The complaint

Miss A is unhappy that ERGO Reiseversicherung AG (ERGO) declined her claim under her mobile phone insurance for theft.

What happened

Miss A had mobile phone insurance with ERGO. She claimed under her policy because her phone was stolen from her bag during a party. Miss A described the circumstances as follows:

- The party was for around 16 people in her friend's house.
- Guests were either her friends, or friends of her friend.
- Miss A kept her phone inside her handbag on the floor at the side of the sofa where she sat.
- She only left her seat twice during the party, each time for a few minutes, to use the kitchen and the bathroom. Both rooms were adjoining or on the same floor as the party.
- When she realised her phone was missing, she reported the theft to the police.

ERGO declined Miss A's claim because, "leaving your device unattended in the company of people not well known to you (friends of friends) is not 'reasonable care'."

Miss A didn't think ERGO applied the policy exclusion fairly, so she complained.

Our investigator thought ERGO applied the policy exclusion unfairly in the circumstances, and she recommended that ERGO should settle Miss A's claim for her stolen mobile phone, subject to the remaining terms and conditions of the policy.

ERGO didn't agree. It said the claim was declined under the "unattended" exclusion, rather than the "reasonable precaution" exclusion, although it agreed the two exclusions were interlinked.

The complaint was passed to me to decide.

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've decided to uphold Miss A's complaint and I'll explain why.

I won't comment on every piece of evidence available to me, and our rules don't require me to. Instead, I'll focus on giving the reasons for my decision.

Firstly, I'll address ERGO's comment that it declined the claim under the "unattended" exclusion rather than "reasonable precaution" exclusion. In its claim decision to Miss A,

ERGO said it declined her claim because leaving her phone unattended is not taking reasonable care. I'm satisfied ERGO relied on both parts of the policy exclusion.

The key issue is that Miss A doesn't think it was fair that ERGO declined her claim for the theft of her phone. ERGO said it declined the claim in line with the policy.

The relevant part of the policy is as follows:

We will not pay for:

4. any claims where you have failed to take all reasonable precautions to prevent damage, theft or loss. This will include, but not limited to:

b. if left unattended in a vehicle or premises, you are to ensure that the gadget is out of sight and that all locks and security devices are actioned

The policy defines unattended as:

24. where you knowingly leave your gadget somewhere where you can't see it but others can and it is at risk of being lost, stolen or damaged. For example – in a restaurant or a pub where you go to the toilet or bar leaving your gadget on a table instead of taking it with you.

I don't think there's any dispute that Miss A left her phone unattended. But I don't think ERGO treated Miss A fairly by declining her claim under this exclusion. That's because the policy definition implies the exclusion applies to public places, where someone has left their phone in sight and easy to take, perhaps without being noticed. Miss A's circumstances are quite different:

- The phone was zipped up in her handbag, therefore out of sight.
- The handbag was on the floor at the side of a sofa, rather than left on a table or seat.
- The party was at a private house.
- She knew, or knew of, all the small group of guests.

When considering these circumstances, I don't think Miss A believed she was taking a risk. She could reasonably have expected to safely leave her bag unattended but with people she knew, briefly, while she used the bathroom or went to fetch a drink. The person who took her phone would've had to reach for her handbag, open it, take the phone out, and return the bag, none of which reflects the type of scenario given in the policy definition.

Simply put, I think it's fair to say Miss A didn't think she was placing her phone at risk of theft by leaving her bag unattended briefly in her friend's home.

In the absence of any evidence of recklessness on her part, I think ERGO has treated Miss A unfairly by declining her claim under the unattended and reasonable precautions exclusion.

Therefore, to put matters right, I think it's fair to require ERGO to reconsider Miss A's claim in line with the remaining terms and conditions of the policy.

My final decision

For the reasons given above, my final decision is that I uphold Miss A's complaint and ERGO Reiseversicherung AG must:

- reconsider Miss A's claim in line with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 3 August 2022.

Debra Vaughan
Ombudsman