

## The complaint

Mr H is unhappy Ageas Insurance Limited has declined a claim for theft under his business protection insurance policy

## What happened

In summary, Mr H's van was stolen from his driveway. Ageas declined the claim due to a condition precedent not being met. This said that during the hours of 9pm and 6am the van needed to be secured building or compound.

The full details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on providing my reasons for my decision.

## My provisional findings

I issued my provisional findings on this complaint on 16 September 2022. I said I intended to uphold the complaint, for the following reasons:

- *"Under the Tools All Risks and Stock in Transit Section of the policy there is a 'condition precedent' - which means before any claim can be considered, the terms of that condition must be satisfied. The relevant condition says that between the hours of 9pm and 6am the van must be in a secured building or compound. The definition of a secure compound is "an area that is fully enclosed by a secure perimeter wall or fence and securely locked gates".*
- *Mr H argues the gates were secured by a sliding bolt across them and two down bolts into the concrete. He points out the definition does not mention the gates have to be locked via the means of a key operated lock.*
- *The term locked isn't separately defined in the policy however, reasonably in this circumstance, I consider it to mean that something has become fixed in position and unable to move. Arguably by bolting the gates in the way Mr H has described, Mr H has met this definition as the gates do become fixed and unable to move. So, I don't think Ageas has fairly declined the claim on this basis.*
- *Even if it can be said that Mr H did breach the condition precedent, the relevant law provides that if he can show this breach didn't increase the risk of loss, then the insurer can't rely on the condition as a reason to decline the claim.*
- *Ageas has acknowledged in its submissions that the gates are high, and a thief would need to climb over them to undo them regardless of how they were secured. Mr H has also confirmed that his neighbour's CCTV was 'knocked out' by the thieves. So arguably here, the thieves were determined and as such I don't believe even if there was a breach of the condition precedent it increased the risk of loss on this occasion. So, I think Ageas should now deal with the claim under the remaining terms and conditions of the policy.*

- *Ageas has also commented that the claim would fail under the 'in transit' section of the policy as it only covers items in or on a vehicle that is parked or stationary for a period not exceeding 24 consecutive hours.*
- *Ageas has said Mr H's van was parked up for 32 hours, however based on the information gathered by Ageas from Mr H this is not correct. Mr H confirmed he parked the van up on Saturday after work and then moved it on the Sunday so he could wash his own car. Moving it back in the afternoon. He reports he noticed it was missing 5am on the Monday. So arguably, based on what Mr H has described, which*
- *I have no reason to doubt as he has provided a detailed recollection, the van was neither stationary nor parked for over 24 hours, it was moved in between. So, I don't think Ageas can decline the claim on this basis either.*
- *It is clear from his submissions that the claim being declined has had a significant impact on Mr H. While some of this is ultimately related to the impact of the theft itself, it is clear the claim being declined has caused Mr H additional trouble and upset. Therefore, I think Ageas should pay Mr H £200 compensation to reflect this"*

## **Responses to my provisional decision**

Mr H responded saying he accepted my decision.

Ageas responded saying that although it accepted my points regarding the 'in transit' section of the policy, it still did not think the claim should be paid as the condition precedent had not been met. It said the Oxford English dictionary definition of locked or lock is "join firmly or render immobile". It said it was of the opinion a sliding bolt did not meet that criteria and by not doing so, it was of the opinion Mr H potentially made it easier for the theft to take place. Ageas said it shouldn't need to define every word in the policy especially when there is a clear general understanding of the word.

## **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.

Should Ageas choose not to define a word or term it believes to be important in the policy documentation then, as it has said, it would be reasonable to look at the general definition of the word or term. However, by doing so, this then means Ageas can't rely on what it intends the word or term to mean or thinks they should mean, depending on the circumstances of the claim.

I've considered the definition of locked that Ageas has provided – "join firmly or render immobile" - which is similar to what I set out in my provisional findings. Where I said I would take it to mean something becoming fixed and unable to move. So, given the definition is broadly the same, I'm not persuaded this changes the reasoning I set out in my provisional findings as to why I think Mr H has met the condition precedent.

And, given the circumstances of this claim and what did happen, I'm also not persuaded the risk of loss was increased.

So, as I remain of the opinion Mr H has met the condition precedent, I'm satisfied Ageas should now reconsider the claim under the remaining terms and conditions of the policy. It shouldn't further decline the claim under the 'in transit' section of the policy as it has now indicated it accepts my thoughts on this matter as also set out in my provisional decision.

Mr H has been caused some trouble and upset by the claim being declined and it think Ageas should pay him £200 compensation to reflect this.

### **Putting things right**

To put things right Ageas should do the following:

- Reconsider the claim under the remaining terms and conditions of the policy. It shouldn't further decline the claim under the 'in transit' section of the policy as it has now indicated it accepts my thoughts on this matter.
- Pay Mr H £200 compensation

### **My final decision**

My final decision is that I uphold Mr H's complaint against Ageas Insurance Limited. I direct it to put matters right as I have set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 November 2022.

Alison Gore  
**Ombudsman**