

The complaint

Miss D and Miss M complain about how QIC Europe Ltd (QIC) dealt with a claim under their home insurance policy for theft of a bicycle.

QIC use agents to administer the policy and to assess claims. Reference to QIC includes these agents.

What happened

Miss D and Miss M had a home insurance policy with QIC, including optional cover for a bicycle. The bicycle was kept in a garage at their property, fitted with an electronic, remote-controlled metal roller door. In June 2022, they woke to find the garage door was open and the bicycle had gone. They contacted the police to report the theft and obtained a crime reference number. They also contacted QIC to report the theft (and the crime reference number) and lodge a claim. Given the circumstances of the theft and the nature of the garage door, Miss D and Miss M thought an electronic device had been used to gain entry to the garage.

However, QIC declined the claim on the grounds that theft (under the contents section of the policy) was covered if there was 'forced and violent entry' (or entry by deception). As there was no physical damage to the garage, QIC said this meant there wasn't evidence that 'forced and violent entry' had occurred. So, the criteria for theft cover hadn't been met.

Unhappy at the decline of their claim, Miss D and Miss M complained to QIC. But they didn't uphold the complaint. In their final response, they referred to policy wording in the contents section of the policy about claims for loss due to theft or attempted theft. This referred to cover for theft if it was caused by theft following 'forced and violent entry' to the home (which would include the garage). QIC said there as there was no damage to the garage, then there was no forced or violent entry. Based on this, QIC confirmed their decline of the claim.

Miss D and Miss M then complained to this service. They disagreed with QIC about the decline of the claim on the grounds that the policy wording of 'commonly stolen' meant stolen only when 'forced and violent entry' was present. They said there was nothing to indicate this when they took out the policy, as they thought the additional bicycle cover would cover a bicycle being stolen or damaged. The bicycle was kept in a secure, locked and alarmed garage. QIC's decline meant they had to pay for a replacement bicycle, which was their main mode of transport (so impacted significantly on them). And having made a claim (albeit declined) it would need to be declared when applying for insurance in the future, so likely to affect their premiums. They wanted QIC to accept their claim (and for QIC to amend their policy to be clearer about the cover being offered).

Our investigator upheld the complaint. She noted Miss D and Miss M's view the garage door had been opened using an electronic device, which meant there wouldn't have been evidence of force or violence being used to gain entry. She thought the term 'forced entry' implied entry against the wishes of the owner, and that damage wouldn't necessarily have to be caused. Based on this, she didn't think QIC had acted fairly in declining the claim, so should reconsider their decision (and accept the claim). She also thought QIC should pay Miss D and Miss M £100 compensation for distress and inconvenience.

QIC disagreed with the investigator's conclusions and asked that an ombudsman review the complaint. They said the theft section policy wording of forced and violent entry meant there would have to be signs of entry in the form of physical signs of damage (which wasn't the case in the theft of Miss D and Miss M's bicycle). They also didn't think there was evidence to show entry was through a device. Nor that the circumstances of the theft would fall under the definition of deception (being used to gain entry).

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.

My role here is to decide whether QIC has acted fairly towards Miss D and Miss M.

The main element of Miss D and Miss M's complaint is that QIC unfairly declined their claim for the theft of their bicycle, on the grounds the theft hadn't involved 'forced and violent entry' (as there was no physical damage to the garage). Miss D and Miss M say there was nothing to indicate this when they took out the policy, as they thought additional bicycle cover would cover a bicycle being stolen. The bicycle was kept in a secure, locked and alarmed garage.

Having considered both views carefully, together with the supporting evidence and information, I've concluded QIC haven't acted fairly in declining the claim, on the grounds they've provided. I'll set out why I've come to this view.

Firstly, as a general principle, where a policyholder makes a claim for damage or loss under a policy, the onus is on them to show there was an insured event that caused the damage or loss. In this case, given the description of what happened, it seems clear the bicycle was stolen. The theft was reported to the police and a crime reference provided. And I've seen nothing to suggest (or dispute) the bicycle wasn't stolen.

However, QIC's view is that the policy terms and conditions only cover theft where there is 'forced and violent entry'. In their final response (and in disagreeing with our investigator's view) QIC refer to the following policy terms and conditions (under the contents section) regarding theft:

5. Theft or attempted theft

We will cover loss or damage to your contents while they are in your home if:

- a. this was caused by theft or attempted theft following forced and violent entry to your home; or*
- b. deception has been used to gain entry to your home."*

Miss D and Miss M say there was nothing to indicate this (the 'forced and violent entry' requirement) when they took out the policy. And they thought the additional bicycle cover would cover a bicycle being stolen or damaged. The bicycle was kept in a secure, locked and alarmed garage. Given this, I've looked at the section of the policy that sets out the additional bicycle cover they opted for when they took out the policy.

Under the "Optional cover for your contents" section of the policy, the cover for bicycles is set out under *Option B – pedal cycles*. The terms and conditions under this option state that loss or damage is under several headings (including *5. Theft or attempted theft* as set out above) and including when the bicycle is at the policyholder's property¹. The terms and conditions under *Option B – pedal cycles* also state:

¹ 'Property' includes the 'home', which includes 'outbuildings' such as garages.

“We don’t cover

o. theft unless, at the time of the theft, the pedal cycle is:

- i. securely locked to a solid object which cannot be moved, using a specifically designed bicycle lock; or*
- ii. in a locked building.”*

Given the wording of sub-section ii, I can understand why Miss D and Miss M thought they were covered for theft, as the bicycle was kept in a locked garage. However, given the optional bicycle cover is described as ‘optional cover for your contents section’ then I think this makes it clear the terms and conditions of the contents section will also apply. This would include 5. *Theft or attempted theft* as set out above.

Returning to the wording of that specific question, the term ‘forced and violent entry’ is not defined or described anywhere in the policy document. So, it becomes a question of what a reasonable interpretation of the term would be. QIC say it means there must be physical damage as evidence ‘forced and violent entry’ has occurred. However, I don’t agree. While ‘forced and violent entry’ can include physical damage or evidence, I don’t think it’s reasonable to say that the absence of such must mean there wasn’t ‘forced and violent entry’.

The garage was closed, locked and alarmed. Which indicates Miss D and Miss M took sensible precautions to secure the garage and the bicycle – it was clearly kept (as the policy requires) in a *“locked building”*.. All these precautions were overcome, so there would have been some means to overcome them (Miss D and Miss M maintain some form of electrical device was used). The nature of what Miss D and Miss M have described about how they think entry was gained to the garage is such that there wouldn’t be physical damage or evidence that entry has been gained. This seems analogous to the ‘relay’ technique often used in the theft of vehicles. Which similarly doesn’t result in physical damage to the vehicle. So, I don’t think it’s reasonable to say the absence of physical damage means there wasn’t forced entry.

Given the absence of any definition of ‘forced and violent entry’ in the policy, this also indicates ambiguity in the wording of the policy. Given this, I’ve had regard to the general principle that where there’s ambiguity in a contract (which is what an insurance policy is) then the contract should be interpreted in favour of the party that didn’t draft it (which would be Miss D and Miss M).

While I’ve reached these conclusions, I’ve also considered the other points made by QIC when disagreeing with our investigator’s view.

First, they don’t think there’s evidence to show entry was gained through a device. However, this wasn’t the grounds on which they declined the claim. And given the description of what happened (Miss D and Miss M waking to find the garage door open and the bicycle missing) together with their view that an electronic device was used to open the garage (together with the similarity to the known relay technique used in vehicle thefts) then I think it’s a plausible explanation for how entry was gained. I’ve also noted what Miss D and Miss M have said when bringing their complaint to this service about their publicising the theft on social media to see if anyone could help with recovery of the bike. Also, I’ve seen no indication from the police they doubt what Miss D and Miss M told them about the circumstances of the theft (or that there had been a theft).

On the point that the circumstances of the theft wouldn’t fall under the definition of deception, I accept the term is generally understood to involve a person gaining entry to a property through deception of the occupants. For example, impersonating a utility firm representative

or other figure that might have legitimate cause to enter a property. Thereby enabling theft to take place. However, this doesn't change my conclusion that QIC have unfairly declined the claim for the reasons I've set out above.

Having reached this conclusion, I've gone on to consider what I think QIC should do to put things right. As I think they've unfairly declined the claim, they should assess the claim in accordance with the remaining terms and conditions of the policy (including, as appropriate, any policy excess).

I've also considered the issue of compensation. Given what Miss D and Miss M have told us about the impact on them, and considering all the circumstances of the case, I think QIC should pay £100 in compensation for distress and inconvenience.

My final decision

For the reasons set out above, it's my final decision to uphold Miss D and Miss M's complaint. I require QIC Europe Limited to:

- assess the claim in accordance with the remaining terms and conditions of the policy (including, as appropriate, any policy excess).
- pay £100 in compensation for distress and inconvenience.

QIC Europe Ltd must pay the compensation within 28 days of the date on which we tell them Miss D and Miss M accept my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D and Miss M to accept or reject my decision before 20 February 2023.

Paul King
Ombudsman