

The complaint

S has complained about Covea Insurance plc's (Covea's) decision to decline a claim it made for stolen tools, under its motor vehicle insurance policy.

What happened

S is represented in its complaint by Mr B. So, any reference to Mr B in this decision will also be a reference to S.

On 6 September 2022, Mr B parked his van outside a retail unit. While he went into a different retail unit, a thief was caught on a CCTV camera, unsuccessfully trying to open the back door of the vehicle. Shortly afterwards he managed to gain entry via a side door without causing any damage. Mr B said the police suggested the door may have been opened by a device used by the thief.

Mr B notified Covea of the claim and sent it the necessary supporting information on 19 September 2022. On 22 September 2022, Covea informed Mr B that his claim had been declined. A week later, Mr B complained to Covea about its claim decision and provided a copy of the CCTV footage of the theft.

On 10 October 2022, Covea's case handler confirmed the decision to decline the claim. He said that he'd reviewed the CCTV footage but as no lights flashed when Mr B walked away from the vehicle, he was of the view it hadn't been properly locked. In the absence of any evidence that the vehicle was locked, or proof that it had been forcibly and violently entered, Covea considered the claim had been fairly declined. This was repeated in the final response letter sent to S on 10 October 2022.

Unhappy with Covea's response to its complaint, S brought the complaint to our service. Our investigator looked into what had happened and issued a view upholding the complaint. She said that the CCTV footage showed the thief had tried to gain access to the rear of the vehicle, but was unable to open the doors, which indicated they were locked. She said it wasn't reasonable for B to solely rely on not seeing the vehicle's lights flash (to show it had been locked) in rejecting the claim. In her view, the thief only succeeded in opening the vehicle after he'd returned to it with a device.

As a genuine theft had occurred, and S had taken reasonable precautions to secure the vehicle, our investigator recommended that Covea accept the claim and pay £150 compensation to S. Covea didn't agree with our investigator's view and asked for an ombudsman's decision on the complaint.

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've come to the same conclusion as our investigator. I will explain why by first setting out the provisions of the policy that are relevant to S' complaint.

Section D of the insurance schedule confirms that the policy provides cover for tools up to the limit of £10,000, with a £250 excess in the event of theft from an unattended vehicle. The same section, in the policy terms and conditions sets out the conditions relevant to the cover provided for tools.

In particular, the terms state that Covea will indemnify S in respect of physical loss, destruction or damage to tools, up to the policy limit, and subject to the exclusions. The exclusion listed at paragraph 4 says:

'4. Damage to Tools caused by theft or attempted theft if it is left unattended unless it is contained in a securely locked motor vehicle trailer or room or box and there is evidence of forcible and violent entry to or exit from the motor vehicle trailer or room or box.'

It is agreed that S made a valid claim, under the policy for the loss of the tools. What isn't agreed, is whether Covea has fairly applied the above exclusion to S' claim.

The policy wording says that in the absence of forcible and violent entry to or exit from the vehicle, the cover won't engage. It seems clear from the evidence available that there was no evidence of forcible and violent entry. So, Covea's decision on S' claim appears to have been made in accordance with the policy terms and conditions. However, in my view, the way it has applied this exclusion to S' claim creates an unfair and unreasonable outcome for S.

After watching the CCTV footage Covea was of the view that, as the lights didn't flash when Mr B walked away from it, the vehicle remained unlocked. However, I've also watched the CCTV footage of the theft, and, on the basis that the thief's first attempt to open the back door was unsuccessful, I agree with our investigator that, more likely than not, the vehicle was locked. The CCTV footage then shows the thief returning to the side door of the vehicle, out of sight, and is able to gain access to the vehicle. The explanation Mr B has given for this, i.e. that the thief had a device which unlocked the vehicle is plausible.

Where the evidence is incomplete or contradictory, as it is here, I make my decision based on what I think more likely than not, happened. In this case I think it likely that Mr B did lock the vehicle and the thief gained unlawful entry to the vehicle using his device.

In response to a question from our investigator, Mr B explained that when he locks the van, the indicators flash and he can audibly hear the lock click. However, in certain light and from certain angles the flashing of the indicator lights does not show up on video. To demonstrate this, Mr B provided additional video footage of him locking the van at a different time, which doesn't show the indicators flashing, but the sound of the lock engaging can be heard. Mr B said that when he'd walked away from the van, prior to the theft taking place, he'd heard the doors lock.

It is widely known that locks of motor vehicles can be overridden by certain sophisticated devices without the need for a key. Mr B told us that the police had suggested this was the way the thief had gained entry into his van. In seeking to apply the exclusion, in circumstances where I'm persuaded Mr B likely did lock his van, Covea is essentially penalising him because a more sophisticated method of entry was used by the thief to gain access to the van, than say, by smashing a window. I don't think that's fair.

As Mr B took the necessary precautions to secure the vehicle before walking away from it, and as the thief gained entry to the vehicle without S' permission and unlawfully removed the tools, I think Covea's decision to decline S' claim because of the absence of evidence of violent and forcible entry, is unfair and unreasonable in the circumstances. I therefore uphold this complaint and require Covea to settle S' claim in line with the remaining policy terms and

conditions. Due to the time S has been without the money Covea should add interest at a rate of 8% simple from the date of the theft to the date it makes payment

Mr B told us that without his tools S has lost working days which has a detrimental impact on its finances. The tools stolen were needed by S for its work, and by rejecting the claim, S has suffered inconvenience. Our investigator awarded £150 compensation to S for that, which I think is fair in the circumstances.

Putting things right

For the reasons set out above, I uphold this complaint and require Covea Insurance plc to:

- Pay S' claim for the theft of the tools in line with the remaining terms and conditions of the policy;
- Add interest to any claim payment at 8%* simple per year from the date the claim was declined by Covea, until the date it makes payment; and
- Pay S £150 compensation for the inconvenience it has suffered as a result of the way the claim has been handled.

It should do this within 28 days of us telling it S has accepted my decision.

* If Covea considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell S how much it's taken off. It should also give S a certificate showing this if it asks for one, so it can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint and require Covea Insurance plc to pay the awards detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 26 April 2023.

Carolyn Harwood
Ombudsman