

The complaint

Mr A has complained that U K Insurance Limited (UKI) have turned down his claim under his 'master of all trades' insurance policy.

What happened

A small JCB Digger owned by Mr A in connection with his business was stolen from his garden between 10 and 11pm. UKI appointed a loss adjuster, who'll I'll refer to as S, to investigate his claim. S turned the claim down on the basis the digger was not being kept in a guarded security park when it was stolen.

Mr A complained to UKI about this. He said he thought his garden could be viewed as a guarded security park. He also said that when he arranged the cover for the digger, he told the customer service agent he would be keeping the digger in his garden and they told him this would be okay. He also complained about the service he'd received while S and UKI were dealing with the claim.

UKI upheld Mr A's complaint about poor service and offered to pay him £200 in compensation for this. But they didn't uphold his complaint about the claim. They said S were correct to turn it down. UKI also registered a separate complaint about the fact Mr A thought he was misadvised when he called to add his digger to his policy. And they issued a final response rejecting this as well on the basis he'd been provided with the policy documentation.

Mr S asked us to consider his complaint. When doing so he asked us to consider his complaint points about the service he'd received, the claim being turned down and being misled when he arranged for the digger to be covered.

Our investigator didn't think Mr A's complaint should be upheld. He said the £200 in compensation UKI had offered for the poor service was reasonable and that he was satisfied their decision in respect of his claim was also reasonable.

Mr A asked for an ombudsman's decision and I issued a provisional decision on 1 February 2023, in which I set out what I'd provisionally decided as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr A's policy seems to cover his digger under 'Section 3 – Tools and Business Equipment', although UKI have not provided a policy schedule, which would enable me to be sure of this. And UKI have rejected Mr A's claim on the basis of the following exclusion in this section of cover:

'Damage due to theft or attempted theft of or from any unattended vehicle:

- a) Unless it is securely locked at all points of access and*
- b) Between 9pm and 6am the vehicle is in a securely locked building or guarded security park.'*

It is not in dispute that Mr A's digger was stolen between 9pm and 6am. Mr A thinks it can be said to have been stored in a guarded security park when it was stolen. He thinks this on the basis his garden could be classed as a park, as it surrounds a country house, has a wall and wooden and Heras fencing around it and it has gates secured from the inside by bolts. And because he and his wife were in the house at the time of the theft he thinks it was guarded.

The policy doesn't define guarded security park, so I think it is fair to take what most people would understand to first of all decide whether Mr A's claim is actually caught by the abovementioned exclusion. This is different to deciding whether it is fair and reasonable for UKI to rely on the exclusion to decline his claim in light of what he may have been told when he arranged the cover for his digger, which I'll come on to later.

Having considered the matter, I don't think most people would see a residential garden as a guarded security park. So, I don't consider Mr A's digger can be said to have been in a guarded security park when it was stolen. And, as this happened between 10 and 11pm, I think this means that – technically – the exclusion applies to defeat his claim.

However, I can understand if Mr A told the customer service agent when he called up to add the digger that he stored it in his garden and was told this was okay, why he would have thought it would be covered in his garden, irrespective of the exclusion. After all, he would have thought he was entitled to rely on what he'd been told by the agent. And I note that in their final response letter on Mr A's complaint about his claim being turned down UKI actually said they could understand why he would have thought his claim would be covered if he'd been told it was okay to keep his digger in his garden.

UKI have said they no longer have a recording of the telephone call Mr A made to add the digger, so I can't know for sure what was said and what he was told. But I've got Mr A's testimony of what was said from what he said when he made his complaint. And I've also spoken to him and got him to go through it with me. He said to me he called to get a quote to add the digger and was told how much it was to add it to his policy. He said that during the call he said it would be kept in his garden and was told this would be okay. So, he went ahead and added the digger. He's explained he did at some point read the policy and noticed the exclusion, but he wasn't concerned about it because of what he'd been told when he called.

I'm persuaded by Mr A's testimony and consider it more likely than not that he did say his digger was kept in his garden and was told this would be okay. And, in view of this, I can also understand why he wasn't concerned when he noticed the abovementioned exclusion clause in his policy. This is because he'd have thought he could rely on what he'd been told and assume UKI would see his garden as an acceptable place to store his digger overnight. In view of this, I do not think it would produce a fair and reasonable outcome to Mr A's complaint, if I were to allow UKI to rely on the abovementioned exclusion to decline his claim.

It therefore follows, that I think the fair and reasonable outcome to Mr A's complaint is that UKI should not be allowed to rely on the abovementioned exclusion and should reconsider his claim in accordance with the remaining policy terms.

I consider the £200 UKI have offered in compensation for the distress and inconvenience Mr A experienced as a result of, what I agree, was the poor service they provided when they and S handled his claim is more than sufficient. I also think this is enough to cover the distress and inconvenience Mr A experienced as a result of having his claim turned down because of an exclusion he didn't think would apply. Mr A hasn't had this money, so this does also need to be paid to him.

I gave both parties until 15 February 2023 to provide further comments and evidence.

Mr A has said he has no further comments or evidence to provide.

UKI responded to say that the further issue of Mr A being mis-sold his policy or being poorly advised by them was raised as a separate complaint under a different reference. And the concerns regarding mis-selling were not addressed in their response to this complaint.

Our investigator responded to UKI to explain that when Mr A asked us to consider his complaint he made it clear it was about both the rejection of his claim and the fact he was misadvised when he added his digger to the policy. And he also pointed out that we had made this clear to UKI at the outset. He further explained that in view of this we considered it appropriate to consider Mr A's concern about what he was told when he called to add his digger to his policy as part of this complaint.

Following this UKI haven't provided any further comments or evidence.

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.

Our investigator is correct in that when Mr A asked us to consider his complaint about UKI, he made it clear he wanted us to consider UKI's decision to turn down his claim and the fact that he was incorrectly advised when he added his digger to the policy; as well as his concern about the service he'd received in respect of his claim. So I agree it is appropriate for us to consider all three of these complaint points as part of this complaint. And this is why I addressed them both in my provisional decision.

As neither party has provided any further comments or evidence on the merits of Mr A's complaint in response to my provisional decision, I see no reason to change my view on what I considered to be the fair and reasonable outcome to Mr A's complaint.

Putting things right

For the reasons set out in my provisional decision, I've decided the fair and reasonable outcome to Mr A's complaint is that UKI should not rely on the abovementioned exclusion to reject his claim and should consider it in accordance with the remaining policy terms.

I've also decided the £200 UKI have offered in compensation for the distress and inconvenience Mr A experienced as a result of, what I agree, was the poor service they provided when they and S handled his claim is more than sufficient. I also think this is enough to cover the distress and inconvenience Mr A experienced as a result of having his claim turned down because of an exclusion he didn't think would apply. Mr A hasn't had this money, so this does also need to be paid to him.

My final decision

My final decision is that I uphold Mr A's complaint and I direct UK Insurance Limited to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 March 2023.

Robert Short
Ombudsman