

The complaint

L, a limited company, complains that Arch Insurance (UK) Limited (“Arch”) has unfairly declined a claim made under its business protection insurance policy.

Any reference to L or Arch includes respective agents or representatives.

What happened

The background of this complaint is well known to all parties, so I’ll summarise events.

- L stored its business goods in a self-storage facility (Company A) within a locked unit.
- In late March 2022, L says it discovered its goods had been stolen.
- L approached Company A which concluded the theft took place between 4 and 5 March 2022. It said L’s door and code to enter were not used on the day in question, and it believed the only plausible explanation of how the unit was broken into was an 11-step process undertaken by the thieves. This included the following steps:
 - The thieves waiting for a unit user to exit the premises enabling them to cover the gate sensor to keep the gate open. The thieves then gained access to the compound using another user’s entry code.
 - Then, upon reaching the unit, forcing a ceiling tile out above it, climbing through the 640mm gap above the ceiling unit, dismantling a top alarm sensor and attaching it to a receiver so it remained in contact. The thieves would then dismantle bolts from the back plate of the lock, then take out the “*whole lock unit*” from the door and frame, allowing the door to open without an alarm.
 - The thieves would then remove the items from the unit, then reverse each of the steps above to make good and leave.
 - Company A also said another unit had been broken into using the same entry code around this time.
- L made a claim under its Arch policy. Arch considered the claim and a loss adjuster (“LA”) on its behalf reviewed the evidence and produced several reports on the loss. It detailed the evidence provided by Company A and agreed the CCTV evidence supported the alleged thieves attending the site and leaving with L’s goods. It provided several options as to how the theft may have taken place but concluded there was no visible evidence of any forcible or violent entry or exit.
- Arch declined the claim, saying:
 - There were no signs of any forced entry to the insured’s unit and the alarm did not activate.
 - It said the alleged sequence of events was not backed up by any evidence of forcible or violent entry to or when exiting the unit – which was required by the policy terms. And it said Company A’s storage unit manager had confirmed this. So, it said cover didn’t apply on this basis.

- It said the padlock used to secure the unit did not comply with the schedule's "minimum standards of security" endorsement. And that the door showed no markings, scratching, or dents consistent with a forcible or violent entry.
- L disagreed, providing videos of several of Company A's staff (including its director) carrying out demonstrations of how they believed the thieves exited the unit – using tools to dismantle the door and disable the alarm. And L argued that the minimum-security endorsement wasn't relevant as the thieves hadn't gained entry through the door and instead had gained access over the top of it – which should be considered "violent and or forcible entry". It also said it had provided photographic evidence of the thieves entering and leaving the site with L's stock.
- L brought the complaint to this Service. One of our Investigators looked into what happened and reached out to both parties.
- Arch said Company A's version of events was not feasible and felt this was an attempt to circumvent the policy condition. And it said the most likely way the events took place was through the front door of the unit and therefore the minimum-security requirements weren't met. Arch questioned why or how the thieves broke into the unit without causing any damage, then broke out again without causing any damage.
- Arch highlighted the thieves would've needed to re-fit the locking mechanism and re-bolt it from the inside as there were no signs of removal after the event – which it says would've been impossible from the outside - meaning one thief would've remained in the unit then left it untouched by retracing their own entry steps. Arch also highlighted there was no evidence of ceiling tiles being forced and questioned why the thieves would've chosen to re-fit them on their exit.
- Our Investigator didn't uphold the complaint. He said:
 - There wasn't sufficient evidence to support L's version of events.
 - In light of the uncertainty on how entry was made, he was satisfied the minimum standard of security endorsement could be relied upon by Arch, and that there was insufficient evidence to support any forcible or violent entry took place.
- L disagreed, saying it had provided indisputable evidence to show no entry had been made through the door of the unit – based on data logs. It said even if L had a sufficient lock in place (in line with the endorsement), this would've set off the alarm so wouldn't be relevant to the loss. L said even if Company A's 11 step process wasn't accurate in every step, the thieves ultimately had to enter the property through forced entry. It also said the other unit that allegedly had a theft via the same method did have damage to its ceiling panel.

This didn't change the Investigator's mind. So, the matter was passed to me for an Ombudsman's decision. I issued my provisional thoughts on 19 April 2023. I've included an extract of this below.

- "The crux of this complaint is L's disagreement with Arch's decision to decline its claim. So, I'll start with the policy terms, which say it will cover:

***"Theft or attempted theft involving...
entry to or exit from the Buildings at the Premises by forcible and violent means excluding any loss from any structure which is incapable of being locked..."***
- There's no dispute over these terms and I'm satisfied they are clearly set out. The starting point is there must be a theft and it must involve some forcible and violent means in relation to the entry or exit of the crime.

- So, I've thought carefully about the evidence and alleged events that have taken place. I make my determinations based on what I consider is more likely than not after considering the evidence.
- Arch's LA outlines in their preliminary report that it had reviewed the CCTV evidence and agreed thieves had accessed the site and left with L's goods. So, it seems there's no dispute a theft has taken place. This leads me to then consider if this theft took place by forcible and violent means.
- Arch has provided images of the door to L's unit from after the incident took place. It says there's no markings, scratching, defacement or dents consistent with a forcible and violent entry. L hasn't disputed the door in question is undamaged.
- When considering policy requirements for "*force and violence*", this Service generally approaches the matter in line with the approach of the courts. And this is to say the use of force and violence does not necessarily lead to damage.
- This Service will typically interpret force as some form of action or energy being applied to something. So, something as simple as turning a handle or opening a door could constitute force. And where said force is over and above what is normally necessary (for instance, use of a lockpick to unlock a door), we consider this to be violent, even if no physical damage is caused.
- L has put forward an 11-step process that it says is the only plausible version of events that must have taken place – that I've detailed above.
- Arch's LA stated:

"Whilst the modus operandi adopted by the thieves may be sophisticated, the video recording of the incident involving the Insured's reported theft is compelling and it is difficult to challenge the validity of a theft from the Insured's unit as reported by [Mr L]."
- Within the LA's commentary, he acknowledges the relevant alarm never went off and hasn't challenged any of the record keeping put forward by Company A that it says shows L's access key was never used around the time of the theft.
- The LA details several different methods of how the thieves accessed the unit itself. I will label these between A – D for ease, and these include:
 - A) The 11-step process outlined above.
 - B) The thieves using magnets to overcome the alarm contacts – which the LA says would've still required the padlocks to be picked.
 - C) The thieves unscrewing the four bolt fittings from the door then replacing them.
 - D) Given the nature of the entry and knowledge of security procedures, some sort of internal involvement of Company A itself.
- Arch has challenged the method of entering the unit, saying L's proposed version of events does not explain a lack of damage to the door, the ceiling, and any of the property involved. As well as the thieves alleged ability to re-bolt the door from the inside after completing the theft – then escaping without any evidence of their presence as well as putting the ceiling tiles back without any damage.
- I would agree the circumstances are unusual. But its own LA, having reviewed the site and relevant CCTV has said this was a sophisticated theft. So, Arch's comments haven't persuaded me any of the options outlined are implausible.
- As I've outlined, there is no damage to the door, or the ceiling tiles. But this doesn't mean automatically no forcible and violent means have been used.

- So, I've thought about the four options the LA described. Each of these possibilities outlined by Arch's own LA requires force to be applied to the ceiling and/or door in a manner that is above and beyond what is normally necessary. This includes option D, of which Arch has provided no further evidence to support such an allegation (and of which its notes reflect there is no evidence to support this), but even if true the LA has made no suggestion L would have had any involvement in such an act so it wouldn't change anything.
- So, on that basis, I would be satisfied any of these possibilities would amount to a forcible and violent entry and exit in line with the policy terms.
- Arch has also sought to rely on its "*minimum standards of security*" endorsement within the policy. It says the lock in question for the unit door did not meet this requirement.
- L has not challenged this but has argued that for Arch to fairly rely on such a term, it would need to demonstrate the breach was material to the loss or damage in question. And it said here the lock wasn't, as the unit wasn't accessed through use of the door.
- L is correct in saying that this Service would expect Arch to demonstrate the breach in question was material to the claim for it to be able to reasonably rely on it. So I have to consider whether or not the lock was relevant to the loss.
- From what I can see, options A and C would not require use of the lock. So, if either of these were the most plausible version of events, I wouldn't be persuaded Arch could rely on its endorsement as it has attempted to. I would also add L has provided evidence of a similar loss in another unit at the facility where damage did occur to the ceiling. So, I think this supports option A that L has put forward.
- The LA has said option B would've required lockpicking. So, I've thought about the wider evidence we have and whether it supports this option. Arch hasn't provided any evidence to support why the alarm in question didn't go off if the door was accessed in this way following the lock being picked, nor have I been provided with any physical evidence of the lock having been picked.
- The potential for Option D hasn't been fleshed out by the LA or Arch. But suffice to say Arch's own comments say there's no evidence to support inside involvement so I don't think this is the most likely explanation either.
- Ultimately, I have to consider what is more likely than not. And it strikes me options A and C are the most plausible here in light of the supporting evidence and expert opinions given. And each of these employ forcible and violent entry."

For these reasons I said I wasn't satisfied Arch had fairly declined this claim, and that I intended to direct it to reconsider the claim - without relying on the endorsement in question, and to do so on the basis the requirement of force and violence has been met – in line with its remaining policy terms. This would mean the onus would shift to L to demonstrate and substantiate its actual loss to Arch.

I gave both parties until 3 May 2023 to respond. L did not respond. Arch disagreed, providing commentary from one of its claims validation specialists. They've reiterated concerns about L's suggested method of theft. In summary, they've said:

- The scenario put forward by L was implausible without some evidence (such as marking or twisting) of forcible entry/exit. And he didn't believe it would be possible to remove the tiles and gain entry over the false ceiling frame given its narrow gap.

- It was plausible the alarm could've been disabled previously by persons unknown to facilitate the theft – which would allow access via the non-compliant padlock. And this would be the only way which would allow this loss to happen without evidence of force and violence.
- They again challenged the logic of why the thieves would've taken the time to replace the mechanism and exit via their entry route – when they could've simply left with the stolen goods.

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'm still upholding this complaint. I'll explain why.

- I've taken on board the commentary from Arch's validation specialist. And I acknowledge their concerns about the lack of markings and damage and the unusual nature of the theft.
- But I have considered these points previously, and within my provisional decision. And as I have pointed to, Arch's own LA has acknowledged the relevant alarm never went off and hasn't challenged any of the record keeping put forward by Company A, describing the theft as sophisticated in nature following their review of the evidence and the site.
- I take on board Arch's specialist's theory on the alarm being disabled prior to the loss taking place. I accept this may be possible, but Arch's previous comments said there was no evidence to support inside involvement. Nor have I been provided with any evidence of record keeping being tampered with or the alarm being disabled prior to the loss. So, this hasn't persuaded me to change my mind.
- Finally, I agree the circumstances described are unusual. But for the reasons I've given previously, I'm satisfied options A and C are the most plausible here in light of the supporting evidence and expert opinions given by both parties in this specific case. And that both of these methods would require forcible and violent entry.

My final decision

For the above reasons, I'm upholding this complaint.

Arch Insurance (UK) Limited must reconsider the claim in line with its remaining policy terms – but without relying on the security endorsement it has sought to rely on – and on the basis that the requirement of force and violence has been met.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 1 June 2023.

Jack Baldry
Ombudsman