

The complaint

A company, which I'll refer to as M, complains that Accredited Insurance (Eurpoe) Ltd (Accredited) unfairly declined a vehicle damage claim following the theft of its vehicle.

Mr M, who is a director of M, brings the complaint on M's behalf.

What happened

M took out a Commercial Fleet Insurance Policy. In August 2022 M's car was stolen and later recovered damaged, so it made a claim on its insurance.

Accredited appointed a loss adjuster to investigate the claim. M told the loss adjuster that the vehicle keys were left on the windowsill in the office. M accidentally left the window open during the night and as a result the keys were stolen, and the vehicle taken. A couple of teenagers were later arrested and charged for the theft. M's vehicle was recovered but it had sustained damage for which M made a claim on its policy.

Accredited rejected M's claim. They said M had failed to safeguard the vehicle. They relied on the reasonable care term in M's policy which said that M must take all reasonable steps to protect its vehicle against loss or damage and maintain it in a safe and roadworthy condition.

M disagrees and believes Accredited has treated it unfairly. M would like Accredited to accept its claim.

Our investigator recommended that M's complaint should be upheld. He explained that Accredited needed to show that M had acted recklessly for it to rely on the reasonable care condition to reject M's claim. In our investigator's opinion, Accredited hadn't shown this, and he didn't think M had acted recklessly. He recommended that Accredited reassess M's claim in line with the remaining policy terms.

Accredited disagreed with our investigator that the reasonable care term hasn't been applied fairly, so the case was passed to me to consider.

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 decided to uphold it.

I've read and carefully considered everything M and Accredited have said. However, my findings focus on what I consider to be the central issues, and not all the points raised.

There is no dispute the theft of the vehicle took place. The general condition Accredited have relied on in M's policy says:

“H. Care of your vehicle

You must take all reasonable steps to protect your vehicle against loss or damage and maintain it in a safe and roadworthy condition...”

Accredited argues that the window was open and the keys were left in an area which was visible from outside, therefore reasonable steps were not taken to safeguard the vehicle.

M has confirmed that it was normal practise for the keys to be left on the windowsill in the office. On a warm day, the window is usually open during the day and the last person leaving the office would close it. On this particular day the window was accidentally left open overnight.

In order to apply an exclusion for reasonable care, an insurer has to, in effect, prove a policyholder has been reckless. The test for recklessness was laid down by the Court of Appeal in the case of *Sofi v Prudential*.

In this case, I don't think Accredited has shown recklessness. I say this because I'm satisfied M accidentally left the window open overnight which was a mistake, I don't think it made a conscious decision to leave it open.

Our investigator told Accredited that M said the window was locked in position and couldn't be opened any further and also that the keys were out of reach. Accredited said that this information hadn't been given to the loss adjuster when investigating the claim but in any event, they hadn't accepted M's explanation or changed their stance on the claim. I've considered this, but I don't think it matters whether the window was locked in position or not because it's not in dispute that the window was left open by M which resulted in the keys being obtained by the thieves.

Putting things right

Given the reasons above, I don't think M acted recklessly and because of this, I don't think Accredited was fair to apply the 'reasonable care' condition to M's claim.

To put things right, I think Accredited should now reassess M's claim in line with the remaining policy terms.

My final decision

My final decision is that I uphold M's complaint against Accredited Insurance (Europe) Ltd.

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

Ankita Patel
Ombudsman