

## **The complaint**

Mr C and Ms M have complained that Astrenska Insurance Limited (trading as Collinson Insurance) declined a claim they made on a travel insurance policy.

As it is Mr C leading on making the complaint, I will mostly just be referring to him in this decision.

## **What happened**

Mr C and Ms M were on holiday abroad in May 2022 with their two children. They had hired an SUV and driven to a new location where they had rented an apartment in a private complex. It was in the underground car park that they had two items of luggage stolen – a large suitcase and a cardboard box full of recently purchased oils and spices.

Astrenska originally declined the claim due to lack of a police report. However, Mr C appealed that as the local police wouldn't release the report to him but he had provided information that Astrenska could request the report directly.

Astrenska then declined the claim on the basis that the stolen items had been left unattended.

In responding to the complaint, it apologised for the delay in assessing the claim. However, it maintained its decision to decline the claim.

Our investigator thought that Astrenska had acted reasonably in declining the claim, in line with the policy terms. Mr C disagrees with the investigator's opinion and so the complaint has been passed to me for a decision.

## **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.

I've carefully considered the obligations placed on Astrenska by the Financial Conduct Authority (FCA). Its 'Insurance: Conduct of Business Sourcebook' (ICOBS) includes the requirement for Astrenska to handle claims promptly and fairly, and to not unreasonably decline a claim.

Mr C has made lengthy submissions in support of his case. I won't be addressing every point here but I would like to assure him that I have read and considered everything that has been provided.

Insurance policies aren't designed to cover every eventuality or situation. An insurer will decide what risks it's willing to cover and set these out in the terms and conditions of the policy document. The test then is whether the claim falls under one of the agreed areas of cover within the policy.

Looking at the policy terms, they state:

*'10. Personal belongings sections of cover*

*This policy offers cover if the personal belongings you own and take with you on a trip are lost, stolen, damaged or destroyed.*

- *You must take reasonable steps to protect your personal baggage from loss, theft or damage.*
- *Unattended items. Do not leave your baggage unattended. There is no cover if your belongings are lost, stolen, damaged or destroyed while unattended.'*

The definition of 'unattended' is:

*'where you or anyone travelling with you, who has your authority to be in control of your personal baggage, are not in full view of your property, or are not able to stop a third party from taking or interfering with your property while not in transit, when baggage (excluding gadgets and valuables and electronic equipment) must be held in a hold or luggage area as required by the public transport carrier.'*

It wasn't immediately noticed that one suitcase and the box were missing. It was four days later that they realised they hadn't been brought up to the apartment. It was at that time they surmised that they must have been stolen on their day of arrival.

On that day, upon arrival at the underground car park, Mr C went up to the apartment. His son emptied all the luggage from the SUV onto the ground behind the car. The two children then went up, taking some of the baggage up with them. Ms M stayed in the car park to guard the remaining luggage.

Mr C says his wife was never more than five metres from the luggage. She wasn't standing next to the luggage the whole time. Due to a health condition, she went to sit in the front seat of the car for a period. At this point she had her sight directed towards the luggage, either because she was facing to the rear or sitting forward but looking through the rear view mirror. Ms M was distracted by a car horn going off (probably deliberately) and moved her gaze to the direction of the noise for a matter of seconds. So, they think it was at this moment that opportune thieves acted. Ms M also says she recalled being aware at some point of other people passing behind the car but didn't have a sense that they had grabbed and walked off with anything.

Mr C has described his wife as being an alert and observant attendee who dutifully remained with the luggage with the purpose of guarding it, looking after it fully and carefully. He says she didn't casually take her eyes off the luggage at any time. Of course, anyone can get tricked or distracted. But given the stated level of Ms M's attention towards the luggage, I might expect that, upon returning her gaze, she would immediately know that a large suitcase and the box were missing. So, without seeing the theft, she would have known that one had taken place. But instead, she was unaware that anything had been taken. So, overall, I'm not persuaded that she was being as careful with the luggage as described. I'm also not necessarily persuaded that Ms M would have had direct sight of the luggage from the front seat of an SUV when it had been placed on the ground immediately behind the car.

The policy makes no mention of any requirement regarding the ratio of people to luggage. So, whilst our investigator has commented on the amount of luggage being too much for one person to be able to prevent its interference from third parties, that's not really a consideration.

The definition of 'unattended' is:

*'where you or anyone travelling with you, who has your authority to be in control of your personal baggage, are not in full view of your property, **OR** are not able to stop a third party from taking or interfering with your property while not in transit,*

So, the relevant consideration here is whether Ms M had full view of the property during the time she was in the car park. And even allowing for the momentary distraction of the car horn, I'm not persuaded that she did.

Mr C believes that Astrenska has wilfully misapplied the definition of 'unattended'. He says that it has taken it to such a level that no theft claims would ever be paid. He has provided a list of ten scenarios where it would not be possible for someone to have a full view of their property at all times.

A few of the scenarios Mr C has mentioned relate to property left in accommodation. There's a section in the policy about 'storing items whilst on a trip', which covers this off. Basically, it means that normal belongings left in accommodation would be covered, although special care has to be taken to lock away valuables and electronic equipment, money, travel documents and gadgets, or store them out of sight.

I appreciate the argument Mr C is making. But I don't intend to go into detail about the remainder of the scenarios because I would expect Astrenska to deal with any such claims on a case by case basis. In turn, this service would then also look at them on a case by case basis if necessary.

I have a great deal of sympathy for Mr C and Ms M. They were victims of unscrupulous thieves who took advantage of the situation. Mr C also did the right thing on discovering that the items were missing by reporting it to the police. However, the question is whether the circumstances of the theft are covered under the policy terms – and unfortunately, I don't think they are.

On balance, I'm satisfied it was reasonable for Astrenska to conclude that the luggage had been left unattended, in line with the policy terms. It follows that I do not uphold the complaint.

### **My final decision**

For the reasons set out above, I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Ms M to accept or reject my decision before 17 April 2024.

Carole Clark  
**Ombudsman**