

The complaint

Mr F has complained about Watford Insurance Company Europe Limited's (Watford's) decision to decline a claim he made under his commercial motor insurance policy for the theft of his van.

What happened

Mr F held a commercial motor insurance policy, underwritten by Watford, which covered his van. He made a claim to Watford for the theft of his van in August 2023.

Mr F says he left the keys to his van inside his jacket near to where he was working, on a private driveway. He says the backdoors of the van were left open, so he could easily access his tools whilst working, but that the front cab was locked. He says the thief snuck up whilst he was working, and took the keys, in order to steal the van.

Watford declined the claim based on a policy exclusion it said applied to the circumstances of the loss – because the van was unattended, and all the doors weren't locked.

Our investigator thought the complaint should be upheld. He said the van was parked on a private driveway and so not immediately open to the public. He said Mr F was within a reasonable distance of the van and keys (which were around five meters apart from each other) and so he felt Mr F was close enough to intervene or prevent the theft. So, he said Watford should settle Mr F's claim and pay 8% simple interest on any settlement due.

Mr F accepted our investigator's opinion, but Watford didn't. So, as no agreement could be reached, the complaint was passed to me to decide.

I was minded to reach a similar outcome to our investigator, but for different reasons. So, I issued a provisional decision to share my thoughts, and to give the parties the opportunity to respond before I reached my final decision. Here's what I said:

“What I've provisionally 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 minded to reach broadly the same outcome as our investigator, but for slightly different reasons. So, I'm issuing this provisional decision, to give the parties the opportunity to respond before I reach my final decision.

Mr F's policy provides cover for the theft of his van, subject to the policy terms, conditions and exclusions. In this case, Watford has declined Mr F's claim based on the following policy exclusion – with my emphasis on the specific part of the exclusion it says is applicable:

“Loss of or damage to Your Vehicle or its Accessories, whilst Your Vehicle is left unattended, arising from Theft or attempted Theft when:

- the ignition keys have been left in or on Your Vehicle; or*
- Your Vehicle has not been secured by means of door and boot lock;
or*
- any window or any form of sliding or removable roof or hood have been left open or unlocked; or*
- Your Vehicle is fitted with a manufacturer’s standard security device and the device is not operational or is not in use.*
- Alarms, immobilisers and tracking devices are not fully operational or switched on when Your Vehicle is left unattended.*

I don’t dispute that, by a strict application of the policy terms, this exclusion applies to the circumstances of the loss Mr F has explained. I say this because Mr F has admitted the rear doors of the van weren’t locked, and because he was over ten meters away from the van, operating a power tool and wearing ear defenders, which I consider amounts to the van being left unattended.

However, as an ombudsman I’m not bound by a strict application of the policy terms. Rather my role is to decide the fair and reasonable outcome to Mr F’s complaint taking into account the law, relevant regulations and the policy terms. This means I need to decide if allowing Watford to rely on the abovementioned exclusion produces a fair and reasonable outcome. And I don’t think it does. I’ll explain why.

The Insurance Conduct of Business Sourcebook (ICOBS) states that insurers should handle claims promptly and fairly, and that they shouldn’t unreasonably reject a claim.

ICOBS also refers to section 11 of the Insurance Act 2015 which explains that an insurer cannot rely on non-compliance with a term designed to reduce the risk of loss, if the insured can show that the non-compliance could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

I’ve kept the above in mind when thinking about whether it would be fair and reasonable to allow Watford to rely on the exclusion.

And, while I accept the back doors of the van weren’t locked, I don’t think this increased the risk of the theft which occurred. I say this because Mr F has been consistent in his testimony about how the loss occurred throughout. And I’ve seen no evidence to contradict his version of events. So, on balance, I’m persuaded that the van was stolen after the thief stole the keys from his jacket while he was working.

Given that the van was not stolen by access through the open back doors – which I understand would not have been possible as there is no access from the rear of the van into the front cab – I don't think Mr F leaving the back doors open increased the risk of the theft happening in the way it did. Instead, it seems to me that even if the back doors had been securely locked, the theft would most likely still have occurred in the same way – i.e., by the theft of the keys from Mr F's jacket. So, as the back doors being open weren't material to the loss which actually occurred, and as I'm not aware that any other part of the exclusion would apply to the circumstances of the loss either, I don't think it would produce a fair and reasonable outcome to Mr F's complaint if I were to let Watford rely on the exclusion it did to decline the claim.

So, unless any responses to my provisional decision change my current thoughts, I'm minded to direct Watford to settle Mr F's claim in line with the remaining terms and conditions of the policy – without applying the exclusion for the doors being unlocked. I think Watford should also pay 8% simple interest on any settlement payment due, from the date it initially declined the claim, to the date of settlement. This is to compensate Mr F for being deprived of the use of funds he was reasonably entitled to under the policy.

Having Mr F's work van stolen would no doubt have been upsetting and distressing for him – which isn't something Watford would be responsible for. But I think Watford's incorrect decision to repudiate his claim would have added further avoidable distress and inconvenience to this already stressful situation. So, in addition to reconsidering his claim, I think Watford should pay Mr F £200 compensation for the distress and inconvenience he experienced due to its incorrect claim decision on his claim.”

I asked both sides to send me any further comments or evidence they wanted me to consider, before I reached my final decision.

Mr F confirmed he was happy to accept my provisional conclusions.

Watford responded to explain why it disagreed with my provisional findings. In summary, it said:

- If Mr F had his keys on him or locked away, the theft wouldn't have happened.
- Mr F wasn't in control of his environment, or the keys, which increased the risk of the theft.
- The elements of distraction have been provided also.
- Watford believes Mr F was reckless, and that had the keys been in a safe or guarded location, the theft would not have occurred.

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 also thought carefully about the responses to my provisional decision. But, having done so, my conclusions remain the same. I'll explain why.

Watford's arguments in response to my provisional decision all seem to relate to Mr F's decision to leave the keys to his van in his jacket, and whether this decision was reckless. But this wasn't the reason Watford declined his claim. Rather, Watford declined the claim on the basis of an exclusion. And I explained in my provisional decision why it wasn't fair or reasonable for Watford to rely on that exclusion in these circumstances. None of Watford's arguments related to this point, and so they have changed my conclusions.

In terms of whether Mr F was reckless with his keys, the Financial Ombudsman Service typically follows the approach of the subjective recklessness test. This means that an individual would usually only be considered to have acted recklessly if they foresaw the risk of their actions but took the action anyway without justification. And it is Mr F's state of mind at the time which is key to answering these questions, not his state of mind in hindsight or someone else's thoughts on what his state of mind should have been.

In this case, Watford hasn't provided me with any evidence which persuades me it has established Mr F recognised the risk but took it anyway. Mr F has explained that he left his keys out of sight in the pocket of a jacket which was reasonably close to where he was working. And he was working on a long, gated, private driveway, out of sight of the main road. Nothing in these explanations would lead me to conclude that Mr F foresaw the risk of his actions.

So, while I fully accept that the action Mr F took did increase the risk of loss (and ultimately ended up in the loss occurring) I don't think it would be fair to say that Watford has demonstrated Mr F foresaw, or ought to have foreseen, the risk of the loss, or that he took the action he did knowing it put his van at risk.

Based on everything I've said above, I remain of the view that Watford can't fairly or reasonably refuse to deal with Mr F's claim for the theft of his van.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mr F's complaint.

Watford Insurance Company Europe Limited must:

- Settle Mr F's claim in line with the remaining terms and conditions of the policy.
- To the claim settlement due, add 8% simple interest* from the date it initially declined the claim, to the date of settlement.
- Pay Mr F a total of £200 compensation for the distress and inconvenience it has caused him.

**If Watford Insurance Company Europe Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr F how much it's taken off. It should also give Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 12 April 2024.

Adam Golding
Ombudsman