

The complaint

Mr and Mrs H complain that esure Insurance Limited trading as Sheilas' Wheels (esure) unfairly declined to settle their claim on their home insurance policy.

Reference to Mr H or Mrs H, will include the other.

What happened

In December 2023 Mr and Mrs H's property was burgled whilst they were not at home. A number of contents from the house were stolen. The incident was reported to the police immediately.

When Mr H contacted esure to make a claim on their home insurance policy for the items stolen in the burglary it declined to accept their claim. esure said whilst their policy covers for damage caused by theft, it had been declined due to an exclusion. It said it would not pay for any loss or damage to their buildings or contents unless *force and violence* had been used to enter or leave their building. It said because there was no damage to their home, there was no forcible and violent entry to the property.

Because Mr and Mrs H were not happy with esure, they brought the complaint to our service.

Our investigator upheld the complaint. They looked into the case and felt esure had unfairly relied on the *violent* clause in their policy to decline the claim. They felt it should cover the claim as well as paying Mr and Mrs H £150 in compensation due to the distress and inconvenience faced as a result of the decline.

As esure is unhappy with our investigator's view the complaint has been brought to me for a final decision to be made.

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.

Where an insurer has turned down a claim for theft, we look at the evidence used by the insurer to support its decision.

An insurer will expect the customer to have reported it to the police and provide a crime reference number (CRN). This, when taken at face value, is enough to show there is a potential claim on the policy.

In this case in addition a crime reference number was provided, and this was supported by a report from the police. Within this report it says;

"CCTV obtained from a neighbouring property clearly shows the offender enter and exit via the front door of the victim's home address. We can confirm that when we attended the

scene, we have tested the door and it locks itself when pulled shut. The door can be seen to be closed properly on the footage before the offender enters. We can therefore confidently say that the offender has used some degree of force to enter the property and the door was suitably shut by the victims when they left the property on the night of the offence. The door was not damaged by the offender but this doesn't mean no force was used".

In this case there is clear evidence that a theft occurred. It is up to esure to show there is a valid exclusion that applies which allows it to decline the claim. It declined to settle Mr and Mrs H's claim because of the exclusion in the policy which says;

"We will not pay for any loss or damage to your building or contents

- caused while you and your household are away from the home unless force and violence is used to enter or leave your building".*

esure do not consider that force and violence was used in this case, because there is no damage to the door.

The courts have considered what is meant by force and violence in a number of cases and we follow a similar approach to that of the courts. The use of force and violence doesn't necessarily lead to damage.

We typically interpret force as some form of action or energy being applied to something. So, in this case turning the door handle and opening the front door would constitute force.

Violent isn't as the word suggests. Where a thief has used a picklock or some other instrument to unlock a door or window we will consider this *violent* even if this results in no physical damage to the property. This is because the thief has had to use a level of force *over and above* what would usually be necessary.

After review of the police report esure said *whilst the reference to 'force' in the report is clear, what we don't have is qualification of 'violence/damage' and in light of this, our decision to decline the claim is maintained.*

Even though there was no damage to the front door and there is no explanation as to how entry was made, the police have confirmed that the thief used some degree of force to gain entry and have confirmed they are still actively investigating all lines of enquiry available.

After consideration of the circumstances of this claim I have not seen evidence of esure assessing the circumstances of this burglary and the evidence provided as a whole. I do not think it was fair or reasonable for esure to rely solely on the exclusion of force and violent entry to decline the claim in this case.

The distress of the burglary has caused Mr H's physical health to suffer and esure's decision to decline the claim has also impacted the distress caused.

Therefore, I uphold Mr and Mrs H's complaint and I require esure to cover their claim under the remaining policy terms and conditions. esure should also pay £150 compensation for the distress and inconvenience caused as a result of its decision to decline the claim.

My final decision

I require esure Insurance Limited trading as Sheilas' Wheels to cover Mr and Mrs H's claim for the theft from their property and pay them £150 for the distress caused as a result of its decision to decline the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to

accept or reject my decision before 3 July 2024.

Sally-Ann Harding
Ombudsman