

The complaint

Mrs F has complained that Astrenska Insurance Limited declined a claim she made on an annual travel insurance policy.

What happened

Mrs F and her family were on holiday in the UK in August 2023 when three bags belonging to herself and her children were stolen from a restaurant.

Astrenska declined the claim on the basis that the bags had been left unattended, which is an exclusion under the policy terms.

In responding to the complaint, Astrenska accepted that there had been some poor customer service. So, it upheld that part of the complaint and apologised. However, it maintained its decision to decline the claim.

Our investigator thought that Astrenska had acted fairly in declining the claim, in line with the policy terms. Mrs F 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.

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, under the Personal Belongings section of cover, it states:
'Important information

- *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:

'When not in transit 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. Whilst in transit baggage (excluding gadgets and valuables and electronic equipment) must be held in a hold or luggage area as required by the public transport.'

Under the Personal Baggage section of cover it states:

'What is not covered

- 1. Personal baggage left unattended or in the custody of any person unless they are a family member, travelling companion or have an official responsibility for the safety and supervision of your property.'*

Mrs F says they were told by restaurant staff that they could not take their luggage to the table. Instead, they were told to leave their bags under the stairs where they would be safe. However, upon going to collect their bags, they discovered they had been stolen. CCTV of the area shows a man entering the restaurant, taking a bag and exiting with it. The man returns two further times, taking another bag each time.

Mrs F and her family did not notice the thief entering the premises three times to steal their bags. Based on the available evidence, I'm satisfied that the luggage met the definition of 'unattended' as set out in the policy terms.

Mrs F has made the point that she and her family were not negligent with the bags – because they had been told by restaurant staff that they had to leave them under the stairs and were reassured that they would be safe there.

Even if Mrs F wasn't given a choice about sitting with the bags while they ate, that doesn't mean that she was free of all responsibility for them. I appreciate the situation the family was in. But ultimately it was her decision to agree for the bags to be left alone in a separate area.

On balance, I'm satisfied that Astrenska was entitled to decline the claim on that basis that the bags had been left unattended.

Astrenska did contact the restaurant for it to comment about the circumstances of the night. The restaurant responded that it had no policy that prevented customers from keeping their bags with them whilst they dine. They said they advised that the group might be more comfortable if they left the bags under the stairs, which was close to where they were sitting.

As I've said, I consider that Astrenska was entitled to decline the claim on the basis that the bags had been left unattended, which could be concluded from the information already available. I'm not sure what information the restaurant could have supplied which would have persuaded Astrenska otherwise or caused them to act outside the policy terms to accept the claim. However, on balance, I think it was reasonable that Astrenska took this extra step to gain additional information, in the interests of exploring every avenue for a possible successful claim.

Mrs F feels that, as the claim was ultimately declined, that means that Astrenska has believed the restaurant's version of events over hers. I don't think it's a matter of believing one side over the other. In making further enquiries, it was looking for evidence to support Mrs F's contention that reasonable care had been taken to protect the bags from theft. However, it didn't receive that supporting evidence and so was unable to overturn its declination of the claim.

I'm sorry for the situation Mrs F and her family found themselves in. They have been greatly inconvenienced and are out of pocket as a result of an unscrupulous thief. However, the question is whether the circumstances of the theft are covered under the policy terms – and unfortunately, I don't think they are.

I've thought very carefully about what Mrs F has said. However, taking everything into account, I'm satisfied that Astrenska acted fairly and reasonably in declining the claim, in line with the policy terms and conditions.

Looking at the claims handling, it is not in dispute that Astrenska didn't do things as well as it could have. It upheld this part of the complaint and apologised for it. Overall, I consider that the apology is a reasonable response to the delays and inconsistencies that occurred. So I'm not asking Astrenska to do anything more.

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 Mrs F to accept or reject my decision before 8 July 2024.

Carole Clark

Ombudsman