DRN-5006840

Financial Ombudsman Service

The complaint

Mr W has complained that Tesco Underwriting Limited declined a claim he made under his home insurance policy.

What happened

Mr W claimed when a ladies watch was stolen from an upstairs bedroom at his address. At the time Mr W had builders working at his property and he had left the back door open so the builders could make drinks in the kitchen. There was no evidence of forced entry. Tesco concluded that the theft was by the builders. It declined the claim in reliance of the following policy exclusion:

You are not covered for:

You are not covered for: loss or damage caused by any criminal or deliberate act permitted by you or your family and/or carried out by you, your family, or anyone lawfully in your home.

Our investigator recommended that the complaint be upheld. He said that Mr W had given permission for the builders to enter the house from the back door only to use the kitchen downstairs rather than any other room. He considered that the builders had exceeded the permission given by Mr W by going upstairs. The investigator recommended that Tesco reconsider the claim in line with the remaining policy terms.

Tesco appealed. It said that when Mr W logged the claim, he was also of the opinion that the builders had taken the watch and the loss adjusters appointed by Tesco came to the same conclusion. Tesco said it was not aware of any evidence that Mr W had only given permission for the builders to **only** enter the kitchen. It said this may well have been an assumption, but there was no proof that this was the case. Tesco said too that Mr W left the property at midday to go to lunch with his friends leaving the home open and the builders had access to the home. It questioned whether that was what a reasonable man would do.

When our investigator didn't change his opinion Tesco asked for an ombudsman to determine the matter.

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 focused on what I think is the key issue here. My approach is in line with the rules we operate under.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've taken those rules into account, along with other relevant considerations such as the contract terms and the relevant regulatory guidance and principles, when deciding whether I find Tesco has treated Mr W fairly.

Tesco has said it appears the only explanation for the loss of the watch is that a builder working in Mr W's home had stolen it. Mr W agrees this is likely. However Tesco maintains that in these circumstances the policy exclusion quoted above applies.

Having considered all the circumstances here I'm not persuaded that Tesco has fairly relied on this particular exclusion in order to decline Mr W's claim. I say this because I am not satisfied that the permission given to the builders to make drinks in the kitchen extended to going upstairs to the bedroom. I find that this would have exceeded any permission given to use the kitchen. It follows that I don't find Tesco has shown that the builders were lawfully in Mr W's home when the theft occurred upstairs.

My final decision

My final decision is that I uphold this complaint. I require Tesco Underwriting Limited to reassess Mr W’s claim in accordance with the policy terms, but without reliance on the particular exclusion quoted above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 11 October 2024.

Lindsey Woloski
Ombudsman