

The complaint

Mr Y is unhappy Amtrust Europe Limited turned down his claim for the theft of two mobile phones.

What happened

Mr Y has gadget insurance with Amtrust provided as part of a single trip travel insurance policy. In February 2024 he claimed on his policy. He said while on holiday on the beach he was *“approached by someone who distracted me with a question. Suddenly, they snatched my bag and fled on a motorcycle. I was left stranded without money, phones, or identification”*.

In April Amtrust turned down the claim. It said having translated a police report Mr Y provided the circumstances of the loss were very different. That report said he'd been on the beach having bought a drink from a vendor. After that he and his friend passed out and when he regained consciousness his bag had gone. Amtrust said that didn't meet the policy definition of theft and in any case the policy didn't cover a device that had been left unattended which it thought was the case here. So it turned down his claim. It accepted there had been some delay in that decision being reached and apologised for that.

Our investigator agreed the claim wasn't covered by the policy and thought Amtrust had fairly turned it down. He agreed there had been some delay in that decision being reached but thought the apology Amtrust had offered for this did enough to put things right.

Mr Y didn't agree. He said the initial report he made to the insurer shouldn't be treated as his official claim as he was still processing what had happened. He filed the police report after he returned home and wasn't able to do so at the time as he'd lost his belongings and had a flight to catch. And when he then made his claim he focussed on the facts he could clearly remember which is why the information about the motorbike wasn't included. He didn't accept he'd left his belongings unattended or that he hadn't taken reasonable care of them. So I need to reach a final 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.

The relevant rules and industry guidelines say Amtrust has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Mr Y's policy. This does cover theft which it defines as *"the gadget has been taken by force, threat or violence by a third party or by a pickpocket with the intention of preventing you from having it"*. However, the policy doesn't cover *"Any claim if you leave your gadget unattended"*. And it defines that as *"the gadget has not been locked away or secured and is not within your sight or arms length reach"*

Amtrust has referenced that exclusion as a reason for declining the claim. It says that's because if Mr Y had passed out at the time of the theft then the device wasn't locked away or secured and would not have been under his control. But while I think it's clear the device wasn't secured the policy doesn't say it needs to be under his control. It says for the exclusion to apply it needs to be not within his sight or arms length reach. Amtrust hasn't shown that's the case here so I don't think it can turn the claim down on the basis of this exclusion.

Amtrust also says the definition of theft hasn't been met as no force, threat or violence was used when the loss took place. But taking into account relevant case law I think it's reasonable to say that *"force"* would constitute some form of action or energy being applied to something. So in taking Mr Y's mobile phones from him a thief would be doing that; taking a phone involves the application of force to it.

However, I do think it's reasonable of Amtrust to have concerns more generally about the circumstances of the loss. For cover to be available for Mr Y's claim at all it needs to fall within one of the insured incidents set out in his policy. And the onus is on a policyholder to show their claim falls within one of those sections. In this case the claim is for theft.

When Mr Y initially made his claim he told Amtrust that the loss had taken place when someone distracted him, snatched his bag and fled on a motorcycle. However, the police report (which does appear to have been filed after his return home) says the theft occurred when he was passed out on the beach after possibly having a spiked drink.

I appreciate if Mr Y's drink was spiked he might well have experienced some disorientation. But that clearly wasn't sufficient to prevent him making his way to the airport and catching what he described as an *"imminent"* long haul flight home. And his claim wasn't made to Amtrust until two days after the incident by which time I think it likely he would have had a clearer recollection of what took place. I don't think Mr Y has provided any plausible explanation as to why the circumstances he described when making his claim to Amtrust are so completely at variance to those set out in the police report. He's described this as a *"discrepancy"* but I don't think that's a fair characterisation of the difference; in my view they represent two completely different explanations for the loss and it's hard to see how they're compatible with each other.

Taking everything into account I'm not persuaded Mr Y has shown an insured incident covered by his policy has taken place. So I think it was fair of Assurant to turn down the claim he made. I agree it took Amtrust longer than it should to make that decision and I appreciate that will have been frustrating for Mr Y. But Amtrust has already apologised for that. Given the relatively limited delay that took place I don't think there's more it needs to do to put things right here.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 3 December 2024.

James Park

Ombudsman