

## **The complaint**

A company, which I'll refer to as M, complains that Aviva Insurance Limited (Aviva) unfairly declined a theft claim made under its Your Office Policy.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of the key events here.

M took out a Your Office Policy underwritten by Aviva. In May 2024, M's vehicle was broken into, and equipment was stolen. M made a claim to Aviva for the stolen equipment. M said the replacement cost of the stolen items was in the region of £28,000. Aviva declined indemnity on the basis that M had failed to comply with its obligations under the terms of the policy.

M said the vehicle was locked and parked in a hotel carpark overnight. When M's employee returned to the vehicle at approximately 7:23am, they discovered the theft. The carpark in question had a barrier to enter and exit.

Aviva said M didn't meet the obligations set out under the policy which states that at the end of any normal working day, the unattended vehicle is garaged in a securely locked building or garaged in a locked compound surrounded by secure wall/and or fences and securely locked gates. Aviva therefore declined indemnity for the claim.

M said that the carpark in question was secured with a barrier. M also argues that the employee's working day usually starts at 6am and therefore, even though they hadn't attended to the vehicle until after 7am, their working day had essentially begun at 6am. M says that the obligation Aviva has relied on only applies outside of working hours and so it doesn't apply in the circumstances of this case. M said it's reasonable to assume that the theft could have occurred between 6am and 7:23am. M says it's unfair that the claim is declined because the employee didn't move the vehicle at the start of his working day.

M explained that it isn't practical to remove equipment from the vehicles overnight. Its employees are therefore only permitted to leave vehicles in reputable hotel carparks. Hotel carparks are considered to be a safe place because they are equipped with barriers and have an automatic number plate recognition camera. The theft in question occurred on foot and so M argues that even if there was a locked barrier, it wouldn't have prevented the theft. M believes it took all reasonable precautions to protect the equipment.

Our Investigator considered the case, but she didn't think Aviva had acted unfairly. She said that the policy term was clear, and she was satisfied that M failed to meet it. She therefore concluded that it was fair and reasonable for Aviva to rely on M's failure to decline the claim.

M didn't agree with the Investigator and asked for an Ombudsman's decision. In summary, it said that having considered the location of where M's employee was required to be, it could only locate three carparks which satisfied the requirements as per its obligation. However, all three carparks were located an hour away, which would not be practical in the

circumstances. M argues the policy term is unfair.

### **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.

Both parties have provided detailed submissions to support their position. I want to assure them I've read and carefully considered everything they've said, but I won't comment on everything.

M's policy provides cover for theft or attempted theft from unattended vehicles. There are also obligations under this section of the cover which the policy says must be complied with.

The obligation which Aviva are relying on to decline M's claim states:

#### **"YOUR OBLIGATIONS UNDER COVER 17**

You must ensure that...

- from the end of any normal working day or on any non-working day until collected by You or Your driver, the Unattended Vehicle is garaged in a securely locked building of substantial construction or garaged within a locked compound surrounded by secure walls and/or fences and securely locked gates."

It is not in dispute that the vehicle was parked in a barrier operated carpark in a hotel. M says that due to the circumstances of the theft, even if the barrier had been locked this wouldn't have deterred the thieves. As noted by M, the barriers weren't locked, so I can't consider something which hasn't happened. But in any event, even if they were, I'm not satisfied that this would sufficiently meet the requirements of the obligation relied on by Aviva. I say this because the carpark which M had parked in was in the open. And although there may be a wall to some parts of the carpark, I wouldn't consider it to be a securely locked building or a locked compound with securely locked gates.

M also argues that the employee's working day usually starts at 6am. Therefore, even though the vehicle had been left in the carpark overnight and the vehicle hadn't been attended to till after 7am, it believes that his 'working day' had already begun at 6am. M says that the obligation therefore doesn't apply to the circumstances of this claim. I'm not persuaded by M's argument here, which is mostly based on assumptions. Firstly, it is not noted what time the theft actually occurred, just what time it was reported, so it may well have been before 6am. Secondly, irrespective of what time the employee would normally start his working day, the vehicle wasn't collected/attended to till after the theft occurred which was after 7am. M's obligation under the policy term was to keep the vehicle in a secured carpark until collected.

I note that 'working day' is not defined in the policy. However, for the reasons explained above, I don't think it really matters what time the employee's working day started. The vehicle was parked and left in the hotel carpark overnight, and it hadn't been collected. While I appreciate their working day may usually start at 6am, the obligation states from the end of any normal working day until collected by you. I believe, the working day finished when the vehicle was parked at the carpark overnight, and the theft occurred before the vehicle had been collected by M's employee. On this basis, I'm persuaded that it was reasonable for Aviva to say that the above obligation does apply to the circumstances of this claim, and to find that M failed to meet it.

M has said the term Aviva has relied on is unfair. I'm not persuaded it is and I will explain why. As an insurer, Aviva are entitled to decide what risks they are and aren't prepared to cover, in this case they've done that by adding an obligation which needs to be fulfilled in order for a claim to be met under the policy. I'm satisfied the obligation was highlighted in the policy and it's clear, fair, and not misleading.

I appreciate that it was difficult for M to remove the equipment from the vehicle overnight, and I have no doubt that it thought about the risk and took steps which it considered reasonable. However, what I need to decide is whether Aviva acted fairly in concluding that the obligation it has relied on to decline M's claim applies here and whether it has fairly relied on it to decline M's claim.

I have thought about the circumstances of this case very carefully. And I understand this will come as a disappointment to M, but for the reasons above, I'm not persuaded that M met the obligation under its policy terms to keep its vehicle in a secured carpark until collected by its employee. I think it therefore would be fair to conclude that the obligation can reasonably apply here.

Taking everything into account, I think that Aviva's decision to decline the claim, based on the policy terms they relied on, was fair and reasonable. I understand that this won't be the outcome that M would've liked but, currently, I can't reasonably ask Aviva to do anything further to resolve this complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 16 January 2025.

Ankita Patel  
**Ombudsman**