

The complaint

L, a company, represented by one of its directors, has complained about its business insurer MS Amlin Insurance SE, because Amlin has declined a claim for theft of equipment.

What happened

L has a premises it works from, which is open to the public and is made up of one room divided by shelving/screens. L's director was working late one night, at his desk, behind the shelving at the rear of the premises, with the entry/exit door at the front of the premises unlocked. The next day it was noted that a bag containing equipment was missing. It was believed a thief had snuck into the premises the night before and taken the bag – located out of the director's sight in front of the shelving/screens.

A claim was made to Amlin, for the stolen equipment, of £6,500. Amlin appointed loss adjusters. There was initially some misunderstanding about whether the premises was occupied or not, and then two exclusions to cover were mentioned as being likely causes for Amlin to decline the claim. One of those exclusions relied on the property – the bag of equipment – being left unattended. L's director said and maintained that the bag had not been unattended – he had been in attendance of the bag.

Having considered L's complaint, Amlin confirmed it was relying on the exclusion under the 'all risks', optional extra cover on the policy to decline the claim. Amlin thought the equipment had been left without supervision or with anyone actively looking after it, meaning it was unattended, and the thief hadn't used force and violence to get in. It was satisfied the claim was not covered under the policy.

When L complained to the Financial Ombudsman Service, one of our Investigators looked into the complaint. She considered both exclusions raised during the claim. She felt Amlin had fairly and reasonably declined the claim.

L's director remained unhappy. He asked that an Ombudsman consider the complaint.

The complaint was referred to me. I said, with regret for the disappointment I knew my findings would cause L's director, I was also of the view that Amlin's decline was fair and reasonable. But I said my reasoning for that differed to that set out by our Investigator, so I would issue a provisional decision to share my views with both parties. My provisional findings were:

"Amlin, in its final response letter, and through its file, has confirmed that it is the 'all risks' section of cover under which it has considered and declined the claim. So I need to assess whether it doing so is fair and reasonable.

The 'all risks' section covers any damage unless specifically excluded – either within that section of cover or generally excluded. The general exclusions listed, starting at page 30 of the policy, don't apply here and haven't been relied upon by Amlin. However, within the 'all-risks' section of cover there is an exclusion which Amlin has relied upon: "damage resulting from theft or attempted theft or unexplained disappearances:

b) of property insured which is unattended unless there is forcible and violent entry or exit.”

So, unless force and violence were used to enter or exit the premises, if an unattended item is stolen, that theft won't be covered. There is no doubt here that the doors to the premises were not locked when the bag of equipment was taken. It is accepted that force and violence were not used to gain entry to or exit from the premises. So the issue then becomes one of, was it fair and reasonable for Amlin to say the equipment was unattended.

Amlin does not choose to define the word “unattended”. There is nothing wrong in that. It would be impractical for an insurer to define every word.

Clauses about items being attended, or what may happen if they are unattended, are common to most insurance policies of this type, as well as featuring in many motor and travel insurance policies. The term ‘attended/unattended’ is not always defined by the insurer. Given the prevalence of the terms, the Financial Ombudsman Service has developed an approach to considering such matters.

We look at the circumstances of the theft. Noting things such as where the stolen item was to anyone present, was anyone present able to keep the item under observation, was their attention on it and were they in a position to be able to prevent the theft had they been aware it was occurring.

Of the theft, and referencing a photo which had been provided of the premises, L's director said: “My desk, where I was working at the time of the theft, is shown on the left. The [equipment] bag was sitting some 10ft in front of my desk. It was obscured by the shelves/screen shown. Both inner and outer doors were pulled closed. The following day, when I realised the bag had been stolen, I recalled that when I'd left, one of the outer doors was partially open. I concluded the thief quietly let themselves in, and took the bag.”

Amlin's loss adjuster also reported that:

“the policyholder was in back of the [premises]. His wife had left for the day around 5pm and [he] stayed until around 9pm. On leaving didn't take his [equipment] bag but assumed his wife had taken it. It wasn't until the next day that they realised neither of them took the bag with equipment and realised someone must of come into the premises without their knowledge and had taken it.”

So, from these two pieces of detail it seems that L's director was in the same room as the bag – the premises only comprising one room. And he was positioned not very far away from it. But it also seems that not only could the director not see the bag from his position – but he was totally unaware that it was there – thinking his wife had taken it with her earlier in the evening. It's difficult to think that someone is paying attention to an item when they are not actually aware it is there.

When thinking about whether L's director might have been able to prevent the theft, I bear in mind the bag was out of sight and he wasn't aware it was there. So, even if he saw someone entering the premises, he wouldn't have known they were a thief about to steal something unless or until the bag was moved into the director's line of sight, such as when it was picked up by the thief. Seemingly, from the details given, whilst the thief, then with the bag in hand, had a clear line between where the bag had been on the floor and the only exit from the premises, L's director had shelving/screens and or a desk to navigate. As such, I'm not persuaded, even if the director had seen the thief enter the premises, it's most likely he could have prevented the theft of the bag.

It was Amlin's view that the bag was not attended. From what I've set out above it can be seen that L's director was in relatively close physical proximity to the bag – but also that he

was not observing it nor capable of observing it given the shelving/screens. Also that he was not keeping any focus or attention on the bag, because he simply did not know it was there. And it seems unlikely that any theft could have been prevented by L's director, because he didn't know the bag was there and because of the layout of the premises. As such I think Amlin's view, that the bag was unattended, was fair and reasonable.

It follows that I'm minded to think Amlin's decline of the claim, on the basis of the 'all risks' exclusion, was fair and reasonable. As such I'm not minded to require Amlin to revise its claim decision."

Amlin said it accepted my provisional decision. L said it disagreed with it.

L said this is not about whether the property was attended or unattended – Amlin had agreed it was attended. Rather it is about the contradictory contract clauses and Amlin's "breach of contract through [its] shifting and inconsistent claim denials". L said it wanted a number of questions to be answered and a legal analysis to be provided.

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 note from L's response that it would like my review to be set out in a "proper legal analysis". Receiving a "proper legal analysis" would be something L might reasonably expect from the courts. If L does not accept my final decision, it is free to seek such a judgment. But this Service is an alternative to the courts. As such we operate in an informal way. We'll, of course, take account of the relevant legislation and consider all of the arguments raised. But we won't reference everything specifically and our Investigators' views and Ombudsmans' decisions, will focus on the issues key to our findings.

I know L has concerns about the findings reached by our Investigator. But I can assure L that those findings have not impacted my decision. Because L did not agree with what our Investigator said, the complaint was referred to me. It is part of my role to view a complaint afresh, which is what I did here and came to a different view to that of our Investigator. My provisional, and now final, decision supersedes the view of our Investigator.

L asked various questions about the overlap and any crossover between the different policy sections. I can understand L wanting to understand this better given the findings issued by our Investigator, which suggested the 'all-risks' section of cover would not be available if a claim was excluded elsewhere in the policy. But, as I noted above, I reviewed the complaint afresh and I didn't find there was any overlap in the cover. Rather, I accepted that L had opted for, and paid to have, the 'all-risks' cover, which is the section of cover Amlin relied upon to decline the claim in its final response letter.

L's claim was ultimately declined by Amlin, under the 'all-risks' section of cover, because it was of the view that the item claimed for was unattended, with no force and violence used to gain entry to or exit from the building. L set out, in its complaint form, its arguments about attendance and asked that the claim was paid. So it was necessary for me to review the claim decline. I realise L also thinks the policy terms are ambiguous. But I don't agree that is the case and, as I said provisionally, it is not unusual for an insurer to not define every term. I also explained the approach this Service has to considering complaints about this type of quite common exclusion.

It was always up to L to check the policy suited its needs. But even if L had noted the 'attendance' exclusion and felt it unclear, L would have been hard pushed to find a policy without such a clause.

I know L has referenced Amlin agreeing that items were attended. I have not ignored that. But that is not the position Amlin finally took – Amlin accepted L's director was in the property, a single room, with the item. Meaning the premises was occupied. But it was also of the view that the item was "unattended" because it was not being 'supervised' or 'looked after'. And I explained provisionally why I was satisfied that Amlin's view, that the item was unattended, was fair and reasonable.

It was not acceptable for Amlin's claim handlers to make errors during the course of the claim. But I haven't seen anything which makes me think Amlin reasonably waived its chance to ultimately decline the claim. And I'm mindful that whilst its reasoning changed, its position was always one of decline.

Having reviewed L's response to my provisional decision, I've not been persuaded to change my view on the complaint. As such, my provisional findings, along with my comments above, are now the findings of this, my final decision.

My final decision

I don't uphold this complaint. I don't make any award against MS Amlin Insurance SE.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 24 July 2025.

Fiona Robinson
Ombudsman