

## **The complaint**

Mr P complains that AmTrust Specialty Limited declined his claim against his travel insurance policy. Reference to AmTrust includes its agents.

## **What happened**

Mr P bought a single trip travel insurance policy and paid an additional premium for gadget cover which is underwritten by Amtrust. He made a claim against the policy in relation to his stolen phone. Mr P says he was with a friend at the beach and left his phone in a zipped bag under their clothes whilst they were swimming. He says when he was swimming back to shore he saw someone standing by his belongings and when he returned to the beach his phone and other items were missing.

Amtrust declined Mr P's claim. It relied on exclusions in the policy which I set out below. Mr P didn't think that was fair. He says he took reasonable and proportionate measures to protect his phone and it was in his sight. Mr P says the policy is ambiguous and contradictory. He wants AmTrust to settle his claim.

One of our Investigators looked at what had happened. He didn't think AmTrust had acted unfairly in relying on the general exclusion about taking precautions to prevent theft and in concluding that Mr P hadn't done so.

Mr P didn't agree with the Investigator. He said he took steps to protect his property and wasn't reckless. Mr P said the policy is ambiguous. He said AmTrust hasn't treated him fairly in relying on the exclusion. Mr P said he'd previously offered to provide a statement from the friend he was with who could confirm his phone was in his line of sight.

The Investigator considered what Mr P said but didn't change his view. Mr P asked that an Ombudsman consider his complaint, so it was passed to me to decide. He asked that an Ombudsman speaks with him before coming to 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 read all that's been provided. I have a good understanding of Mr P's points, which he has explained clearly. I don't need to speak with him for the fair resolution of this complaint and it's rare that this is necessary.

I've summarised this complaint and what's been said in far less detail than Mr P. I don't respond to every single point made. No discourtesy is intended by that. Instead, I've focussed on what I think are the key issues here. The rules that govern our service allow me to do this as we are an informal dispute resolution service. If there's something I've not mentioned it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to fulfil my statutory remit.

I've taken into account the law, regulations and good practice. Above all, I've considered what's fair and reasonable. The relevant rules and industry guidance say AmTrust has responsibility to handle claims promptly and fairly and must act to deliver good outcomes for retail consumers. I don't uphold this complaint and I'll explain why:

- As the Investigator explained, travel insurance isn'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. I don't agree with Mr P's assertion that insurance is designed to protect against all risks the insured can't eliminate reasonably. In general, and as long as consumers are treated fairly, insurers can decide which risks they wish to accept and the terms on which they're willing to do so.
- The onus is on the consumer to show the claim falls under one of the agreed areas of cover within the policy. Mr P has done that here. Where the event is covered in principle but is declined on the basis of exclusions in the policy, the onus shifts to the insurer, AmTrust in this case, to show how the exclusions apply.
- The relevant exclusions in this case are as follows:

***'What we will not cover***

*x[...]*

*x Any claim if **you** leave **your gadget** unattended for example – where **your gadget** is left in a coach or bus while **you** are sightseeing or at the side of a pool.[...]*

***'General Exclusions***

*[...]*

***We** will not pay for:*

*[...]*

*11. any claim if **you** have not taken precautions to prevent [...] **theft** [...], for example:*

*[...]*

*b) if you leave **your gadget** unattended [...]*

The policy defines '**unattended**' as '*...the **gadget** has not been locked away or secured and is not within **your** sight or arms length reach.*'

- These sorts of exclusions are common in policies of this type. I don't think they are ambiguous, unusual or unduly onerous.
- If an insurer turns down a claim because the consumer failed to take reasonable care – '*precautions to prevent [...] theft*' in the language of the policy - there needs to be evidence to show the consumer acted in a way that amounted to recklessness. The test of recklessness is the one set out in the leading legal case on reasonable care Sofi v Prudential Assurance (1993) 2 Lloyd's Rep. 559. In summary, a consumer fails to take reasonable care if they recognise a risk but take it anyway by taking measures which they knew were inadequate or by taking no measures at all.
- I've noted what Mr P says about where and how he left his phone. He says whilst he and his friend were swimming in the sea, he left his phone in a zipped bag on the beach, under clothes. It wasn't locked away or secured and it wasn't within his reach. Mr P says his belongings were within his sight at all times. In response to the Investigator's views, Mr P said he walked backwards into the sea and then only

swam in one direction, keeping the phone in his sight.

- I don't think AmTrust acted unfairly or unreasonably in relying on the police report in relation to the circumstances of the theft, which doesn't mention that Mr P had sight of his belongings at all times. I think the police report is likely to be reliable as Mr P made that report on the same day as the theft and without regard to the policy wording. I've noted what Mr P says about this but I'm not persuaded AmTrust should give greater weight to Mr P's subsequent explanations.
- I think it would be unusual to swim in the sea and have belongings on the beach in your sight. The more unusual something is, the more evidence is required. Mr P has referred to providing a statement from his friend who he says would confirm that his phone was in Mr P's line of sight. It's up to Mr P to provide whatever evidence he wishes to rely on in relation to his claim and complaint. Mr P hasn't provided a statement from his friend. I haven't asked Mr P to provide such a statement because it's not clear to me it would alter the outcome here. Mr P's friend would be commenting on events several months later and I don't think a third party could accurately establish Mr P's line of sight at the relevant time.
- In all the circumstances of this case, I don't think AmTrust acted unfairly or unreasonably in concluding that Mr P hadn't taken precautions to prevent the theft of his phone. I think AmTrust was entitled to rely on the general exclusion I've set out above. In addition, I think it was reasonable for AmTrust to conclude that Mr P had left his phone unattended. So, it's also entitled to rely on the exclusion under the heading 'What we will not cover', which I've set out above. I don't think AmTrust acted unfairly or unreasonably in declining Mr P's claim.

### **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 Mr P to accept or reject my decision before 4 February 2026.

Louise Povey  
**Ombudsman**