

## The complaint

H has complained that MSIG Europe SE has turned down its claim for a stolen vehicle under its Motor Fleet insurance policy.

Any reference to MSIG includes its agents and trading names.

H is represented by Mr S.

## What happened

A vehicle insured under the policy was stolen from outside of H's barbers shop and it put in a claim under the policy. MSIG investigated the claim. It then turned it down on the basis that H had failed to comply with the following policy condition:

*You must take all reasonable precautions to safeguard the insured vehicle and maintain them in a roadworthy condition.*

H complained to MSIG, but it wouldn't alter its position. So Mr S asked us to consider H's complaint.

One of our investigators said H's complaint should be upheld because he didn't think MSIG had shown that H had breached the above-mentioned condition.

MSIG doesn't agree with the investigator's view and has asked for an ombudsman's 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.

In view of the wording of the condition, I consider that in determining the fair and reasonable outcome to H's complaint I need to consider the test set out by the Court of Appeal in *Sofi v Prudential [1993] 2 Lloyd's Rep. 559*. The condition MSIG has relied on is only slightly different to the wording of the clause the Court considered in this case in that it refers to reasonable precautions, whereas the clause the Court considered said reasonable steps. But to all intents and purposes it requires the same of H.

In this case the Court endorsed what might be best described as a test of recklessness. In doing so it effectively said that if the insured recognises there is a risk he should not deliberately court it by taking measures which he himself knows are inadequate to avert it. It went on to refer to the fact that it is not enough for the insured's failure to take particular precautions to be negligent, it must be at least reckless.

I have considered MSIG's particular arguments as to why it thinks H's employee's failed to take reasonable precautions to safeguard the vehicle that was stolen. And in responding to these I have set out my reasons for upholding H's complaint.

The first one I have considered is that the employee who allowed a passerby to use the toilet at the rear of the shop, which was next to the unlocked staff room where the keys to the vehicle were left on a worktop was reckless in doing so. But I do not agree. This is because he has said the door to the staff room was closed and he did not consider it a risk that the person he let in would open it and take the keys. He backed this up by saying letting people in to use the toilet was something they normally did. So, I do not think the employee recognised there was a risk and then courted it by failing to take steps which he knew were inadequate to avert it. It seems to me that he didn't even get to the point of recognising the risk because allowing passersby in to use the toilet at the back of the shop was a normal and regular occurrence and customers who did this had never accessed the staff room as far as he was aware.

And I think MSIG's suggestion that the staff room could have been locked and that unvetted and unsupervised people should not have been allowed access to the back of the shop isn't really realistic. H has a small barbers shop, which it seems is in the middle of a community and I think it was reasonable for them to show a certain amount of trust in helping out the community by allowing people to use its toilet. After all, the vast majority of people doing so would not be a thief.

The second argument I have considered is that it was reckless of the shop manager to leave the vehicle at the same location from which its keys were stolen, regardless of who actually stole them. MSIG has pointed out that, while he did this because the battery on the spare key he brought with him to collect the vehicle was dead, he knew the main key was missing and could easily have purchased a replacement battery from the convenience store next door to the barbers shop.

I can of course see why MSIG thinks the manager's failure to take the steps necessary to move the insured vehicle was a reckless act. However, I am not persuaded that he knew or thought the main key had been stolen. I agree that if he had realised the main key had been stolen he should have realised there was a significant risk that someone would come back with the key and steal the insured vehicle if he left it outside the shop. But based on what he said in his statement after the theft, I consider it more likely than not that he knew the key was missing, but had no idea it might have been stolen. I say this because he said in his statement that he was not in the shop when the person came in to use the toilet and was not aware that this had happened until after he found out the car had been stolen. So, he had no reason to think the keys had been stolen, as opposed to mislaid. So, I do not think he even realised there was a risk the car could be stolen with the main key when he left the car outside the shop.

It therefore follows that I do not consider H's staff breached the above-mentioned policy condition. This means I don't consider it would produce a fair and reasonable outcome to this complaint if I were to allow MSIG to rely on it to reject H's claim.

I note that our investigator said MSIG should reimburse the storage and recovery charges Mr J paid to the Police. However, these are something it will need to consider when it deals with H's claim.

If MSIG settles H's claim, this will mean H has been without the funds due to it due to MSIG's unreasonable decision to rely on a breach of the above-mentioned condition. Therefore, H needs to be compensated for being without this money. To achieve this MSIG will need to pay interest on any amount due to H at 8% per annum simple from one month after it made its claim to the date of payment. I have chosen one month after the claim as the date interest should start from because I think a month is a reasonable amount of time for an insurer to assess a claim for the theft of a vehicle.

## **Putting things right**

For the reasons set out above, I've provisionally decided to uphold H's complaint and require MSIG to do the following:

- Deal with H's claim without relying on a breach of the above-mentioned condition and in accordance with the remaining policy terms.
- Add interest to any amount due in settlement of H's claim at 8% per annum simple from one month after H made the claim to the date of settlement.\*

\* MSIG must tell C if it has made a deduction for income tax. And, if it has, how much it's taken off. It must also provide a tax deduction certificate for H if asked to do so. This will allow H to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.

## **My final decision**

I uphold H's complaint about MSIG Europe SE and require it to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 23 March 2026.

Robert Short  
**Ombudsman**