

## **complaint**

Mr Q complains as agent for the director of a limited company, H, that AIG Europe Limited won't pay a commercial insurance claim for theft from H's premises.

## **background**

In May 2018 two thefts of goods took place from H's premises. On reviewing CCTV footage it was found that the thief had gained entry by using a master code (known only to the Landlord) and a key. The thief had been able to switch off the alarm and then reset it on leaving, H made a claim to AIG. But AIG declined to pay the claim as the policy had an exclusion for theft other than by entry or exit to the building by forcible and violent means. Mr Q complained to AIG that its refusal to pay the claim was unfair, and that he thought that the entry to the premises was by forcible and violent means. AIG maintained its refusal to pay but paid £75 as it failed to acknowledge two complaint letters.

On referral to this service our investigator thought that AIG had acted reasonably and that it had shown that the theft didn't involve entry or exit by forcible and violent means.

Mr Q didn't agree and the matter has been passed to me for consideration.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The policy concerned is a commercial one, suitable for shop businesses. Among the general exclusions in the policy is the following:

*"theft other than theft Involving entry to or exit from a building by forcible and violent means or attempt thereat."*

As it's an exclusion, it's for the insurer to show that it applies ie that the theft *didn't* involve entry or exit by forcible and violent means. I should point out that it has to be both forcible *and* violent. Here the CCTV footage shows that the thief used a key and entered using a master code both to disable and reset the alarm system. Using a key in itself we do regard as forcible but we don't consider it to be violent, and there is legal authority for this. Mr Q doesn't know how the thief obtained the code but the evidence shows that the thief used it merely by entering it on the keypad.

I don't think that either the use of the key or the code were violent – there is no evidence that the thief either forced the lock or tampered with the alarm system. It seems most likely to me that the thief obtained both the key and the code prior to entering the premises.

I have considered whether it was fair for the insurer to rely on the exclusion. This is a very common exclusion in both commercial and home insurance policies. In light of that we don't regard it as being the type of exclusion that needs to be drawn to the consumer's attention.

Mr Q suggests that the exclusion itself is an unfair contract term. I don't think it is. Insurers are entitled to limit their liability as far as theft/burglary claims are concerned.

I've noted that AIG has paid £75 compensation, essentially for the way it handled the complaint. How an insurer carries out its complaints procedures isn't a regulated activity that falls under our powers to deal with. So I can't consider this any further.

Overall I think AIG has fairly shown that the exclusion for theft applies in this case and it has acted fairly in applying it.

**my final decision**

I don't uphold the complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q on behalf of H to accept or reject my decision before 24 August 2019.

Ray Lawley  
**ombudsman**