

## **complaint**

Mr N complains that U K Insurance Limited has unreasonably refused to pay a claim he's made on a travel insurance policy.

## **background**

Mr N was abroad when his bag was stolen as he paid for a meal. He made a claim under his travel insurance policy.

But UKI refused to pay it. It says it's done so in line with the policy terms and conditions. The policy says the bag needs to be "in full view". As Mr N says he'd walked away and left it at the table as he was paying, his bag wasn't in his full view. The bag was left unattended and as such the theft isn't covered by the policy.

Mr N doesn't agree. He says he could see his bag at all times. He was constantly observing it. He went to pay for his food and while getting out his money noticed someone moving from the table. He doesn't think UKI can expect a person to focus on their baggage at all times as this isn't possible. His bag was in full view and wasn't unattended. He wants UKI to pay the claim.

Our adjudicator recommended that this complaint should be upheld. She explained that:

- UKI's definition of "unattended" was that the bag wasn't in Mr N's full view and he wasn't in a position to prevent its unauthorised taking.
- The Courts have also considered when items are "attended" or not. They've said that to be attended an item must have been kept under observation so that there was someone able to observe any attempt to interfere with it and prevent any unauthorised interference.
- In this case Mr N was keeping his bag under observation and he says there were no obstacles obstructing his view. The bag was therefore in full view. The policy doesn't require the bag to be kept in full view at all times. It would be unreasonable to expect a person to have an all round vision of their personal items at all times. This isn't possible. Mr N also says he was only 3 to 4 metres away from his bag. So, even though he was momentarily distracted whilst paying he was in a position to prevent the unauthorised interference with or taking of the bag. This is regardless of whether he actually successfully prevented the theft of the bag or not.
- UKI hasn't treated Mr N fairly or reasonably by refusing to deal with his claim. It should now pay the claim in accordance with the remaining terms and conditions of the policy plus interest.

UKI doesn't agree. It says the policy wording says the bag shouldn't be left unattended and needs to be "in full view". It doesn't say it only has to be in full view sometimes or most of the time. Mr N wasn't in attendance of his bag as he'd walked away and left it at the table whilst he paid at the counter. The bag wasn't in his full view as he'd turned away. He should've taken the bag with him to the counter.

Mr N says UKI's approach suggests if the bag was on his right he wouldn't be allowed to look to his left, up, down or at a companion. He thinks that's ridiculous. The bag was only

about two meters away. He didn't turn away to pay. The bag was in front of him. There was no obstruction to his view. Even if he'd taken the bag with him and placed it at his feet it could've been swept up and stolen.

### **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 main issue I must decide is whether UKI is entitled to refuse to pay Mr N's claim.

The policy says that the bag is classed as unattended, and isn't covered, if it's not in full view and you aren't in a position to prevent it being stolen.

I don't think UKI is reasonably entitled to rely on the exclusion, and I'll explain why.

The Courts have considered the question of unattended items. They've said that a requirement to keep an item under observation does no more than impose a duty of common care. And also that to be "attended" there must be someone able to keep an item under observation. That is someone in a position to observe any attempt to interfere with it, and who is so placed as to have a reasonable prospect of preventing any unauthorized interference with it, whether or not they actually do so.

In this case Mr N's account of what happened has been consistent. He says he was at most 3 to 4 meters from the bag when he went to the counter to pay and he kept looking at his bag in front of him. While paying he saw a figure move away from the table. He ran back to it but his bag was gone.

On balance I think Mr N had kept his bag under observation. He was in a position close enough to it to intervene regardless of whether or not he would've been successful in preventing the theft. Despite this when Mr N was momentarily distracted dealing with his money the thief struck. But Mr N did see the thief move and tried to intervene albeit unsuccessfully. I think this satisfies Mr N's duty of care. And I also think his bag was therefore attended.

UKI also says that the bag needed to be in "full view" to be covered. But Mr N says it's unreasonable to expect a person to look only at their personal item at all times.

I think it's likely that Mr N was only momentarily distracted for a matter of seconds when dealing with his money. In that time the bag was still in front of him but inevitably wasn't his sole focus or necessarily in his full direct line of sight. He would've naturally been looking at and concentrating on his money in that short time. That's both understandable and reasonable. And even so, Mr N still saw a figure move away fast from the table and he reacted accordingly.

Overall, in all the circumstances of this case, I don't think it's fair or reasonable to apply the policy exclusion in the way UKI suggests. I think UKI should've dealt with Mr N's claim.

### **my final decision**

For the reasons I've discussed above my decision is that I uphold this complaint and I require U K Insurance Limited to deal with Mr N's claim subject to any remaining limits,

excesses, terms and conditions of the policy. It should also pay simple interest on any sums it pays to Mr N at the rate of 8% a year from the date of the claim until the date of settlement (less tax if properly deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 13 November 2015.

Stephen Cooper  
**ombudsman**