

complaint

Ms R complains about Ageas Insurance Limited's decline of her claim made under a photographic equipment insurance policy.

References to Ageas include its appointed agents.

background

Photographic equipment belonging to Ms R was stolen from the locked boot of a friend's hire car while she was abroad. Ms R claimed under her Ageas policy but was told that because there was no sign of forcible or violent entry in to the vehicle, the theft fell outside the terms of cover. Not satisfied with this outcome, Ms R complained to this service.

Our adjudicator recommended the complaint be upheld. She felt the photographs Ms R had provided of the hire car showed damage, albeit slight, to the passenger side door lock, which she believed was most likely the result of something being forced into the lock. She concluded that this was sufficient to indicate forcible entry to the vehicle and recommended Ageas reconsider the claim.

Ageas disagreed, arguing there was no sign of forcible and violent entry into the vehicle. It pointed out the hire firm made no mention of any damage, as one would have expected, when the car was returned to it.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Ageas cites the following policy term, covering theft from a vehicle, in excluding Ms R's claim:

"What is not covered

...

Theft when access has not been made by Forcible and Violent Entry"

"Forcible and Violent Entry" is defined as "entry evidenced by visible damage to the fabric of... the vehicle at the point of entry"

It is an established principle of insurance that it is for a policyholder to demonstrate they have a valid claim under their policy. If the insurer then seeks to rely upon a policy exclusion in declining the claim, it is for the insurer to establish that the exclusion in question applies, on balance.

The courts have decided that force need not involve the use of physical violence. For example, simply turning a handle or opening a shut door may be considered as forcible entry. On a fair and reasonable interpretation of the policy terms and conditions as a whole, I consider that the act of an unidentified thief entering the car and removing Ms R's equipment from it would constitute a *"forcible entry"*.

It is arguable as to whether the car was also entered by violent means. So, strictly speaking, the exclusion outlined above might appear to defeat the claim.

However, as I say this service assesses complaints based upon what we consider to be fair and reasonable in all of the circumstances of the case. The rules of our scheme (DISP rules set out in the Financial Conduct Authority handbook) require that this service, in considering what would be fair and reasonable, take into account the relevant law, regulatory rules, guidance and standards and, where appropriate, what we consider to have been good industry practice at the relevant time. I am not, therefore, required to determine this complaint solely in accordance with the strict contractual terms.

To my mind, it would be unfair for Ms R's – otherwise apparently genuine – claim to fail on the basis of a technicality such as the requirement of violence in addition to force. I understand that Ageas would want evidence that a theft did take place, however, I am aware of nothing to suggest otherwise in this instance. In fact, that Ms R reported the theft to the police only goes to further demonstrate that the loss is entirely genuine.

In any case, I am not convinced that simply because the hire firm did not mention any damage when the car was returned that this should somehow defeat the claim. As I understand it, any scratch below a certain length will not be recorded as damage by the hire firm. In my experience, it is possible that the thief gained entry to the car without causing any scratches in excess of the specified distance. Indeed, the deep scratch to the passenger door lock as shown in the pictures provided by Ms R appears to be well below that length. While this could have been caused by wear and tear, I think it is more likely that it was not, due to its apparent depth.

Ageas has expressed concern over the police not describing how entry to the vehicle was obtained. But I gather that when the theft was reported, the police did not attend the scene. As such, I do not find it surprising that the police did not comment on how the vehicle was entered.

In all the circumstances, I do not believe Ageas is reasonably entitled to rely on the exclusion clause in question.

my final decision

For the above reasons, my final decision is that I uphold this complaint. I require Ageas Insurance Limited to reconsider Ms R's claim without further reference to the exclusion clause in question, and in line with the remaining policy terms.

Since I have made a directional – as opposed to a financial – award on this occasion, I have not awarded any interest.

Nimish Patel
ombudsman