

complaint

Mr F's complained that Tradewise Insurance Company Limited unfairly refused to pay a claim on his commercial vehicle insurance policy, after his van was stolen.

background

Mr F claimed on his policy after his van was stolen. He said a thief had stolen his keys that were in the pocket of his jacket, that he'd hung up on a post.

Tradewise turned down his claim. It said he'd left his jacket and van unsupervised in a publicly accessible location. And he wasn't close enough to the van to notice it being stolen. It didn't think Mr F had taken reasonable steps to safeguard the van from being stolen.

Mr F complained to Tradewise as he thought it should have paid his claim. Tradewise arranged for an investigator to interview Mr F to find out more details of how the theft occurred. But after doing so remained satisfied it had turned down his claim correctly. Mr F brought his complaint to us.

Tradewise accepted Mr F was likely to have not recognised the risk. But said the property the van was stolen from wasn't secure and both the van and the jacket could be viewed by the public. It said Mr F had been away from his jacket for long enough for someone to steal the keys without him seeing them. It also said residents might also be used to seeing him leaving his belongings in places while he works.

I issued a provisional decision on this complaint on 26 February 2020 where I explained what Tradewise needed to do to put things right. In that decision I said:

The terms and conditions of Mr F's policy say that he needs to take reasonable steps to safeguard his vehicle from loss.

When considering whether it's fair and reasonable for an insurer to rely on the term that a policyholder didn't take reasonable steps or reasonable care, we consider whether they (in this case Mr F) were reckless. By this I mean that they recognised there was a risk and did nothing to avert it.

Tradewise's investigator's report says Mr F said he locked his van and put the keys in his jacket. Mr F said he was mowing the lawns for around 30 minutes before getting too warm and so removing his jacket. He said he hung his jacket on a post and left it with his lawnmower about 25 yards away from his van. He said his jacket was in sight while he worked and he didn't leave the compound. Mr F said he went to empty a bin and noticed a male pass him. He said shortly afterwards he noticed his van was missing. Tradewise said Mr F's jacket was out of his sight for long enough for someone to take the keys without him noticing.

Mr F said he was vigilant but Tradewise has accepted that he probably didn't recognise the risk of the theft. I think it's unlikely Mr F would have left his keys where they were if he thought there was a risk to his van being stolen, given that he needed it for work. So, Mr F might have been careless in leaving his jacket where it was, but he wasn't reckless. And I don't think it's fair and reasonable for Tradewise to rely on this term to turn down his claim.

To put things right I intend to require Tradewise to pay Mr F's claim in line with the remaining

terms and conditions of the policy. It should add interest to the settlement at a rate of 8% simple per year from the date of the theft to the date it makes payment.

Mr F's told us about the inconvenience of not having his van for work. He said he had to hire a van from someone who works with him but only had this for three or four days a week. He said this van was smaller than his which meant he couldn't carry as many tools and had to make more journeys to get rid of waste. He was able to buy another smaller van on 1 August 2019 but again said this was smaller than he needed for work. I'm persuaded by what Mr F's said, in that he had to make other arrangements to keep working and this caused him a financial loss as well as unnecessary distress and inconvenience. I think the fair and reasonable outcome to compensate him for this, is for Tradewise to pay Mr F £10 a day loss of use from the date his van was stolen to 31 July 2019.

Mr F accepted my decision but Tradewise disagreed. It maintained that Mr F had been reckless in leaving his keys in a public area and not on his person. It said the fact he'd hidden his key shows that he was risk aware and still chose to leave them. Tradewise also disagreed with paying loss of use as it said the policy doesn't cover this. It also said it shouldn't have to pay this from the date of the theft because it had to appoint an investigator and our service had also spent time looking into things.

I contacted both Mr F and Tradewise to say that I'd considered Tradewise's point and accepted that in this case it wasn't fair to award loss of use from the date of the theft. However, I thought Tradewise had taken longer than it should have done to investigate and turn down the claim. I said six weeks was a reasonable amount of time for it to have made a decision in this particular case. So, I said Tradewise should pay Mr F loss of use from six weeks after the claim until 31 July 2019.

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 additional comments Tradewise made haven't persuaded me Mr F was reckless. While he might have recognised a risk in leaving his keys on show, he'd hidden them in his jacket. And as I said in my provisional decision, while he might have been careless, I don't think that was reckless, even if the jacket was out of sight for a few moments. I say that because I don't think Mr F thought about the risk, but didn't care whether his keys were stolen. So, I remain satisfied that it isn't fair and reasonable for Tradewise to have turned down Mr F's claim.

I'm aware the policy doesn't cover loss of use, but I think Tradewise unfairly turning down Mr F's claim caused him a loss he shouldn't have had. And as he was without the use of a van he should have had I think £10 a day is a fair and reasonable amount to compensate him for the other arrangements he had to make. I think Tradewise took longer than it should have done to turn down Mr F's claim. So, I don't think it's fair that it only compensates him from the date it turned down his claim. I think Tradewise should have been able to make a decision on Mr F's claim within six weeks. So, I think the fair and reasonable outcome is for Tradewise to pay Mr F £10 a day loss of use from six weeks after the theft to 31 July 2019.

Tradewise also said it's not responsible for any time that occurred between Mr F coming to our service and us requesting information from it. However, I still think Tradewise should pay

loss of use during this time, as Mr F wouldn't have had to complain to us if Tradewise hadn't unfairly turned down his claim.

my final decision

My final decision is that I uphold this complaint and require Tradewise Insurance Company Limited to:

- Pay Mr F's claim in line with the remaining terms and conditions of the policy;
- Add interest at 8% simple per year from the date of the theft to the date it makes payment¹;
- Pay Mr F £10 a day loss of use from six weeks after the date of the theft to 31 July 2019.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 26 April 2020.

Sarann Taylor
Ombudsman

¹ If Tradewise Insurance Company Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr F how much it's taken off. It should also give Mr F a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.