

## **The complaint**

Mr and Mrs D complain about HDI Global Speciality SE (HDI) who declined their claim under their home insurance policy.

## **What happened**

Mr and Mrs D raised a claim with HDI, following a theft of their van and its contents. HDI appointed a loss adjuster to validate the claim. During the claims process, it was found that Mr D who had been using the van on the day, had left the van unsecured, albeit parked on private land. When he returned to the van, it and its contents had been taken.

Because of this, HDI declined the claim under the policy terms and conditions. It said that Mr and Mrs D had failed to take all steps to safeguard against theft, loss or damage. So, Mr and Mrs D raised a complaint.

In its final response, HDI maintained its position and relied on the policy terms and conditions. It also highlighted a policy exclusion. As Mr and Mrs D were given their referral rights, they referred a complaint to our service.

One of our investigators considered the complaint and ultimately thought it should be upheld. He said that Mr D didn't recognise the risk of leaving the keys in the van and not locking it. Nor was he aware that someone was watching him. He also said that the circumstances of the claim didn't pass the test for recklessness. So, he was unable to conclude that Mr D was reckless in his actions, nor did he think HDI had. He recommended that HDI settle the claim and pay Mr and Mrs D £100 compensation for the trouble and upset caused.

Mr and Mrs D accepted the view, HDI did not. It said that a hypothetical prudent man wouldn't have done what Mr D had done. And would've locked the van and taken the keys with them. Therefore, it concluded that there had been a breach of the duty of care and the claim had been fairly declined. So, it asked for a decision from an ombudsman.

## **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.

I considered the complaint, and I thought the complaint should be upheld. I issued a provisional decision on 8 January 2024 and asked both parties to send me anything else by 5 February 2024. In my provisional decision I said:

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

*Having done so, I'm minded not to uphold this complaint. I understand that this is likely to be a disappointment to Mr and Mrs D, but I hope my provisional findings explain why I think this is fair.*

*I've considered the comments and evidence from both parties. HDI declined the claim based on the policy terms and conditions, in that Mr and Mrs D failed to take reasonable steps to ensure the safety of the van from theft or damage.*

*Our approach in cases like this, is that HDI would need to show that Mr and Mrs D acted 'recklessly' for the decision to decline to be fair and reasonable. This accords with the leading authority of *Sofi v Prudential Assurance* which set down a two-part test:*

- First, the insurer must show that the insured recognised that there was a risk their car might be stolen.*
- Second, the insurer must show that, having recognised the risk, the insured took no action to prevent their vehicle being stolen (including its contents) – or took actions which they knew were inadequate.'*

*The test that is applied is based on what the consumer would have thought or did, rather than the average or reasonable consumer.*

*Mr D said he had driven the van and parked it on a gravel track outside the address, which was parked around 30 metres away from where Mr D was working. He then went into a shed and did some work there. He said that he had left the keys unattended outside the van near his toolbox, the van was also left unattended. When he returned, around 10 minutes later, the van, keys and contents had been stolen. He made a claim for the contents with HDI, who instructed a loss adjuster to validate the claim. That claim was ultimately declined.*

*HDI said that under the general condition of the policy, that a policyholder had a duty of care to ensure that all safeguards had been taken to prevent loss or damage to vehicles. It said it also relied upon the policy exclusion that stated under the 'what is not covered' section:*

*'Theft or loss from unattended motor vehicles unless from a closed glove compartment, locked luggage boot or locked luggage compartment following forcible and violent entry to a vehicle which has been locked and all windows and sunroofs closed.'*

*HDI explained that the duty of care that Mr D should've employed was to ensure that the van was locked, and the keys remained on his person. They said that during the interview with Mr D he initially told them that the keys to the van were on his person. When questioned further he admitted that the keys were left unattended near his toolbox and van. He said that thieves had stolen the van and keys.*

*HDI said that because Mr D left the van unattended, with the keys near it whilst out of sight of Mr D, this supported and heightened the risk. It said that because Mr D initially said that the keys were on his person and later changed his version to accepting that the keys were left by the van, this supported that he recognised the risk but took no preventative action that could avoid the theft being carried out.*

*Having carefully considered what Mr D said, I'm currently persuaded that he recognised that there was a risk to the car being stolen. I say this as he initially told HDI that the keys were on his person. But, if the keys were on his person, I think it's reasonable that he would've realised, if someone was trying to steal the keys from him.*

*I note that when Mr D was challenged, he accepted that he left the keys exposed and unattended for around 10 minutes. I think by doing this, he hadn't ensured that he had taken reasonable safeguards to prevent the loss.*

*I also think, that at the point of leaving the keys unattended near the van, this supports that he recognised the risk and took it anyway.*

*In addition, HDI relied upon the policy exclusion in which thefts that were not caused as a result of violent or forcible entry, weren't covered. As the van was left unattended with the key close by, I can't see that the entry to it was because of violence or forcible entry.*

*I understand that Mr and Mrs D emphasised that the location of where Mr D parked the van was in a rural location. I've had a look at ariel maps of the area, and I can see there were several homes close by. And the information suggests that there are 32 properties in the area. Accordingly, given the location and that the keys and van were left unattended for a period, I'm currently persuaded that leaving a vehicle unlocked, with expensive items contained in it, does seem reckless. If, however, Mr and Mrs D have any further evidence that is contrary to this, then I will consider it. But at this time, I'm minded not to uphold this complaint.*

Responses to my provisional decision

HDI had nothing further to add.

Mr and Mrs D made several comments. I have carefully considered all the points raised and they haven't persuaded me that the provisional decision outcome ought to be changed. So, I'll explain why.

I appreciate that the event had a profound effect on Mr and Mrs D, and I accept that Mr D said that he has suffered from anxiety following the incident. However, our service assesses the evidence that both parties provide and based on that evidence, arrive at a decision that is fair and reasonable.

The main issue of this complaint is whether B was fair to decline the claim. I reviewed the evidence and in particular the policy terms and conditions.

Mr and Mrs D in their reply, said that there were inaccuracies with the facts, but they haven't outlined what they were.

In summary, they said that there was no consideration about the trauma the incident had on Mr D. No mention that he was in shock and his recollection was blurred. There was a big issue made about the keys to the van and Mr D not being consistent in his responses to questions. They said that HDI had no intention of paying out on the claim and the assessor it sent, did everything to try and unnerve Mr D from the outset. They felt that HDI ought to have taken the same view as their car insurance company who had paid out. And that they were not reckless. They asked if CCTV had been viewed and explained that the location where the theft took place was on a private road on a park estate and disputed whether there were 32 dwellings in the area. And whether they mentioned the location being rural.

I understand that Mr and Mrs D said that an error was made in relation to the location of the van and its theft. They said at no point did either of them mention rural location. And they had only ever mentioned that the theft took place on private land.

Mrs D wrote to HDI in June 2023, in that document, she mentioned that the theft took place on rural/private land. Further, Mr D told HDI during the initial report that the location was on rural land.

I should point out that the provisional decision looked at the actions prior to the theft of the van and what isn't in dispute is that the van keys were left close by. The van was left unattended for a while and when Mr D returned, the van had been stolen. On this basis, HDI said it was reckless. When we look at what amounts to reckless, we use the leading decision of *Sofi v Prudential Assurance* (1993) 2 Lloyd's Rep.559. In summary, a consumer failed to take reasonable care if they recognised a risk but took it anyway by taking measures which they knew were inadequate or taking no measures at all.

HDI said that by Mr D leaving the keys by the van, that had been left unattended, meant that he had recognised the risk of leaving the van keys by the van and in doing so, he failed to take reasonable care.

Mr D was interviewed by HDI during the claims process. He was asked for his account of what happened. He explained that he had locked his van, left some tools by the side of his van and placed the keys to the van either in his pocket or on top of the toolbox. He then went into the shed to do the job, which took him around ten minutes.

Also, from the interview notes it stated: *'that the key to his van, that he used on the date of the incident, was also missing and stolen at the time of the theft. At this point our Investigator highlighted the likelihood that the keys were in fact left by his van rather than in his pocket as it was difficult to accept, they could have been taken from his person without him becoming aware. The Insured confirmed that the keys were left by his tools, next to the van and this must be how the vehicle was stolen in a short space of time.'*

Mr D said that there was CCTV of the incident but hasn't provided that. I don't think the issue is whether the van was taken, it really is the actions of Mr D and whether those actions were deemed as reckless.

HDI said that leaving the keys close by and leaving the van unattended is a risk that he ignored. Given the circumstances, I'm persuaded that Mr D was reckless in his actions and I do think that HDI has satisfied the test of recklessness.

In addition, HDI relied on the following policy condition: *'Duty of care. You and members of your family will take all steps to safeguard against theft, loss, damage, accident or injury.'* And declined the claim. Having reviewed the policy, I can't see that HDI acted unfairly. Not only did Mr and Mrs D agree to the terms of the policy when they took out cover, but I'm persuaded that their actions contributed to the theft of the van.

Whilst I sympathise with the position that Mr and Mrs D find themselves in, applying the policy terms and conditions, and the recklessness test, I can't agree that HDI were unreasonable to decline their claim. Accordingly, there is nothing further that I can reasonably ask HDI to do here.

## **My final decision**

For the reasons given, I don't uphold Mr and Mrs D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 4 March 2024.

Ayisha Savage  
**Ombudsman**