

The complaint

Miss B and Mr Y complain about Admiral Insurance (Gibraltar) Limited's ("Admiral") decision to decline their claim under their home insurance policy.

Mr Y has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any actions taken, or comments made, by either Miss B or Mr Y as "Mr Y" throughout the decision.

What happened

Mr Y says two people entered his home using false identities and stole a watch worth £3,300. Mr Y says one of them was wearing the watch and then walked out of his home, but Mr Y felt he would be in danger if he tried to prevent them from leaving with his watch. Mr Y says he reported the incident to the police and also made a claim against his policy. Admiral declined the claim on the basis there was no forced entry into his home, so Mr Y complained.

Admiral responded and explained the account Mr Y gave them was that he placed an advertisement to sell his watch on social media and other marketing sites. They said, two people contacted Mr Y and then came to Mr Y's home to look at the watch. Admiral said they understand Mr Y let them into his home and they then stole the watch. Admiral explained the claim had been declined as there was no forced entry. Admiral referred to a section in the policy terms and conditions which said they wouldn't cover a claim unless force and violence was used to enter into Mr Y's home.

Our investigator looked into things for Miss B and Mr Y. She thought Admiral hadn't acted unfairly in declining the claim. Mr Y disagreed so the matter has come to me for a decision.

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.

Having done so, I've decided not to uphold the complaint. I understand Miss B and Mr Y will be disappointed by this but I'll explain why I have made this decision.

I'll start by saying, I'm sorry to hear about the impact the theft had on Miss B and Mr Y. My role requires me to say how a complaint should be settled quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute.

The key dispute here relates to Admiral's decision to decline the claim based on a policy exclusion relating to force and violence. So, I've looked to see whether Admiral's decision is fair and reasonable.

My starting point is Mr Y's home insurance policy booklet which sets out the terms and conditions. This shows Mr Y is covered for theft but, under a section headed 'What is not covered', it says, "*Loss or damage caused by you or your family... or any other person*

lawfully in your home...unless force and violence was used to enter your home." The key part of this term which Admiral are referring to in support of their decision to decline the claim is 'force and violence' – which they say hasn't been used here.

This type of restriction is intended to make sure an insurer only has to pay claims where a policyholder's home has obviously been broken into. Insurers use this term to avoid the risk of paying claims where a theft has occurred and where circumstances have allowed the thief to get in and out of a property without having to actually break into the property or cause any damage.

The courts have considered the question of what constitutes 'force and violence' in a number of cases and the legal approach to these types of cases has developed over time. I've reviewed the relevant case law, and one important judgment said the words 'actual forcible and violent entry', "...*was intended to mean an entry effected by the exercise of force in a manner that was not customary in order to overcome the resistance of the usual fastenings and protections in the premises. If a person turns a key he uses force but not violence. If he uses a skeleton key, he uses force but not violence. If on the other hand instead of using a key he uses a pick-lock, or some other instrument, or a piece of wire, by which as a lever he forces back the lock, it appears to me that he uses force and violence...*"

Our service generally takes a similar approach. The use of force and violence doesn't necessarily lead to damage. We will typically interpret 'force' as some form of action or energy being applied to something. So, something as simple as turning a handle or opening a door would constitute force. Where a thief has used a picklock or some other instrument to unlock a door, we will consider this 'violent' even if this results in no physical damage to the property. This is because that person has had to use a level of force over and above what would usually be necessary – and they've gained entry in a manner that wasn't customary. So, I've applied this approach to the facts of this case.

Claim notes provided by Admiral show Mr Y reported the incident to Admiral and explained the circumstances leading to the theft of his watch. He explained he invited the two people into his home and, while one was wearing the watch on his wrist, they walked out. In applying the terms of the policy, I can't say the two people gained entry into Mr Y's home in a manner which wasn't customary and with force over and above what was necessary. There's no dispute here that the two people gained access to Mr Y's home through the door being opened for them. That said, I have gone further and considered the event beyond just the initial access to Mr Y's home. The case law I've considered here also highlights that, even if force and violence isn't used to get into the property initially – but is used to access another part of the property – there are instances where it may be fair in the circumstances for this to be covered. In this case though, I haven't seen any evidence in Mr Y's account of events to Admiral or our service which persuades me this applies here.

I can see another area of dispute between the parties relates to whether the two people were in Mr Y's home lawfully. Mr Y says they weren't in his home lawfully as they used false identities and their plan was to steal his watch. I do acknowledge Mr Y's points, but the information shows Mr Y gave permission for the two people to enter his home and I haven't seen any evidence to suggest they exceeded any permissions given. I do acknowledge Mr Y's point about their action in using false identities amounting to an unlawful act, but I think the context in which the term 'lawfully' is used in the terms and conditions relates to someone lawfully being in a property. And in this case, as I've mentioned, Mr Y gave permission for the two people to enter his home. So, from the information I've seen, I can't say the two people entered into Mr Y's home, or remained there, unlawfully.

In Mr Y's testimony, he explains one person was wearing the watch when they walked out of his home. It's not clear how or why this person was wearing the watch – and whether Mr Y gave them the watch to try on. But, based on Mr Y's contemporaneous account of events when reporting the incident to Admiral, I haven't seen any evidence that force or violence was used to take the watch. So, taking into account the case law, the policy terms and conditions and our service's approach – and applying these to the facts of this case, I can't say Admiral have acted unfairly in declining the claim based on the 'force and violence' exclusion.

My final decision

For the reasons I have given, it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B and Mr Y to accept or reject my decision before 25 January 2024.

Paviter Dhaddy
Ombudsman