

The complaint

Mr and Mrs M are unhappy that Accredited Insurance (Europe) Ltd declined a claim they made for theft of contents after their home was burgled.

What happened

Mr and Mrs M's home was burgled when they were on holiday. The thieves gained access through a downstairs bathroom window after attempting access, and causing damage, to other parts of the house.

Accredited declined Mr and Mrs M's claim based on an endorsement within the policy which stipulates that any windows with a key operated locking mechanism must be locked in order for a claim for theft to be covered. Accredited says the downstairs window wasn't locked, which is how the thieves gained access. So, it says Mr and Mrs M's failure to comply with the endorsement was material to the loss.

Mr and Mrs M say they were transparent about the fact that not all of the windows were able to be locked. They feel it's unfair for Accredited to refuse their claim in these circumstances.

One of our investigators considered this complaint and thought it should be upheld. She acknowledged that the endorsement, but she said the thieves were determined to gain access, as shown by having attempted access in two other places. She said they smashed the downstairs window in order to gain access, and so she didn't think the locking mechanism being locked would have prevented the theft. So, she didn't think the fact the window wasn't locked was material to the loss. Based on this, she said Accredited should deal with the claim and that it should pay Mr and Mrs M £100 compensation for the distress and inconvenience it had caused them by refusing to do so already.

Accredited didn't accept our investigator's opinion, so the complaint has been passed to me to decide.

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 agree with the outcome reached by our investigator. I'll explain why.

Mr and Mrs M's policy covers them for loss or damage to their home and contents by theft or attempted theft, subject to the policy terms, conditions, exclusions and endorsements. Their policy schedule contains the following endorsement which is relevant to their claim and complaint:

“Endorsement(s) that apply to this policy

Please read the following endorsement(s) carefully and in conjunction with your policy wording

Theft and malicious damage excluded if security requirement not met

When:

- 1. there is nobody in your home; or*
- 2. the residents have gone to bed for the night in the main building;*

you must:

- a. remove keys from all locks and keep them out of sight or reach of a potential intruder; and*
- b. ensure that the locks declared in your insurance application are put into full and effective use.*

We will not pay for loss or damage caused by any theft, attempted theft (see cover 5) or malicious acts (see cover 8) unless you meet both requirements (a) and (b)”

I don't dispute that by a strict application of the above endorsement, it can be argued that the claim isn't covered as the window wasn't locked. But I'm also mindful that Mr and Mrs M answered truthfully during the sale, by saying no, when asked whether all their windows were able to be locked with a key. And I can't see that Accredited followed up to confirm whether this meant some windows had locks and some didn't, or whether some of the windows with locks weren't able to actually be locked. In any event, as an ombudsman I'm not bound by a strict application of the policy terms. Instead, my role is to consider what is fair and reasonable, in the particular circumstances of a complaint, and that's what I've done here.

The Insurance Conduct of Business Sourcebook (ICOBS) says that insurers should handle claims promptly and fairly and they shouldn't unreasonably reject a claim. It goes on to explain that an insurer shouldn't refuse a claim for breach of warranty or condition unless the circumstances of the claim are connected to the breach.

Accredited has argued that the breach of the endorsement in Mr and Mrs M's case is material to the loss being claimed for, because the thieves were able to reach in and open the window in question to gain access to the property, after breaking the glass, because the lock wasn't in full and effective use.

I've thought carefully about this argument, and I can see its merit to some extent. However, as explained by our investigator, it's clear that the thieves in this case were particularly determined to gain access to Mr and Mrs M's property. Not only had they made attempts at entry through other potential access points, causing damage in the process, but they went as far as to smash the glass in the bathroom window in order to gain access.

I accept that the open locking mechanism, in breach of the endorsement, meant they were then able to open the window and let themselves in, after having smashed the glass pane. But I'm not persuaded the locking mechanism being engaged would have prevented their access.

I say this because the pictures of the window clearly show that the opening between the relevant window sash was large enough for a person to climb through, without needing to open the window using the handle. So, given the determined nature of the thieves, and the fact they'd already broken the glass pane, on balance, I think that had the locking mechanism been engaged, they would most likely have pushed the remainder of the glass out of the sash and climbed through the opening.

So, even though the thieves gained access using the window which hadn't been key locked, on balance, I don't consider the fact it wasn't locked was actually material to the loss, in these particular circumstances. This is because I think the thieves would most likely have gained access by the same window even if the lock had been engaged.

In these circumstances, I don't consider that Accredited's decision to decline the claim for breach of the policy endorsement delivers a fair or reasonable outcome. Taking all the circumstances into account, I think Accredited should deal with Mr and Mrs M's claim in line with the remaining terms and conditions of the policy. I also think Accredited should pay Mr and Mrs M £100 to compensate them for the distress and inconvenience its current, in my view, unfair claim decision has caused them.

My final decision

For the reasons I've explained above, I uphold Mr and Mrs M's complaint.

Accredited Insurance (Europe) Ltd must:

- Deal with Mr and Mrs M's claim in line with the remaining terms and conditions of the policy.
- Pay Mr and Mrs M £100 compensation for the distress and inconvenience it has caused them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 6 February 2024.

Adam Golding
Ombudsman