

The complaint

Mr S has complained that Admiral Insurance (Gibraltar) Limited (Admiral) declined a claim he made under his contents insurance policy when his property was burgled.

What happened

Mr S holds a contents insurance policy which is underwritten by Admiral. He made a claim to Admiral after his bag was stolen from a hotel and his property was subsequently burgled in October 2023.

Admiral declined the claim for several reasons. It said:

- The theft of the bag predated inception of the policy and so couldn't be covered.
- Mr S hadn't taken adequate steps to mitigate the risk of the burglary after the bag, containing his keys and letters showing his address, was stolen.
- Mitigating the risk of further loss is a specific requirement outlined in the policy terms.

Mr S brought his complaint to our service where it was looked at by one of our investigators. She didn't think the complaint should be upheld. She said Mr S would have been aware of the potential risk to his home and didn't take sufficient steps to mitigate the risk, so she thought Admiral's decision to decline the claim was fair. She also highlighted that Mr S' policy terms, outlining the requirement to mitigate further loss or damage, were emailed to him and available on Admiral's website.

Mr S didn't accept our investigator's assessment. He disputed that the policy information was emailed to him and explained that Admiral's website was down at the time he took out his policy. So, he says he couldn't have known about the policy requirement and so it's unfair for Admiral to rely on it to refuse his claim.

As no agreement could be reached, the complaint was passed to me to decide. I was minded to reach the same overall outcome as our investigator, but for slightly different reasons. So, I issued a provisional decision, to give the parties the opportunity to respond before I reached a final decision. Here's what I said:

"What I've provisionally 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, while I appreciate it will come as a disappointment to Mr S, I agree with the outcome reached by our investigator. But my reasoning is slightly different in places which is why I'm issuing a provisional decision.

Mr S' bag was stolen from a bar within a hotel at around 1am on 7 October 2023. The bag contained keys to his property and letters addressed to him at his address. Mr S says he couldn't get the spare keys from his parents until 8 October 2023 as they were in different parts of the city with their respective elderly mothers. Mr S contacted a locksmith but says the one he spoke with wasn't available until 8 October 2023 either. So, Mr S spent the night of the theft of his bag, and the following night, at his girlfriend's home.

At around 5pm on 7 October 2023, Mr S also took out a contents insurance policy for his property. On 8 October 2023 Mr S discovered his property had been burgled so he subsequently made a claim to Admiral on the contents insurance policy. But Admiral declined the claim on the basis the bag theft happened prior to inception of the policy and because Mr S hadn't taken appropriate steps to mitigate the risk of further loss.

I've thought carefully about the circumstances of this claim and complaint. It's clear from the actions Mr S took following the theft of his bag that he recognised the risk to his property, hence contacting a locksmith and taking out a contents insurance policy. So, the question I need to ask myself is whether he took reasonable actions to prevent further loss. And in the circumstances, I don't think I can reasonably conclude that he did.

I say this because, as confirmed by our investigator who checked, there were a large number of alternative 24-hour locksmiths available within Mr S' area. So, I don't think it's fair to say that he would have been unable to gain access to and secure his property on the night of the bag theft had he made reasonable attempts to do so. Similarly, while I appreciate his parents may have been in different parts of the city, given the significant potential risk to his property, I think it would have been reasonable for Mr S make the trip to collect the spare keys, in the unlikely event that none of the local 24-hour locksmiths could attend that evening. So, as neither of these reasonable measures were, in my view, fully pursued, I agree with Admiral that Mr S did not take sufficient action to prevent the risk of further loss.

Mr S' main objections to our investigator's assessment have focused on whether he was appropriately provided with a copy of the policy terms and conditions when taking out the policy on 7 October 2023. He says he wasn't, and so he couldn't reasonably be aware of the requirement to mitigate further loss.

I've checked with Admiral, and it has confirmed Mr S is correct when he says its website was down and so Mr S wouldn't have been able to access his terms and conditions via the website that weekend. Admiral has also now confirmed that it wasn't until 12 October 2023 – after the burglary – that the documents were emailed to Mr S as attachments. So, I agree with Mr S that he wasn't provided with the documents quickly enough to have been specifically aware of the full terms of cover at the point he made the claim.

I've thought carefully about this, and about Admiral's obligations to provide Mr S with the right information, at the right time, and in a format he could understand so that he could make informed decisions. Typically, I might reach a view that relying on a condition which wasn't appropriately communicated to a policyholder would be unfair. But this would be in circumstances where the condition was something that the average person wouldn't reasonably be aware of or do naturally. For example, a condition requiring a certain standard of locking mechanism on a door, or that valuables are kept in a certain standard of safe.

But in these circumstances, the condition is one which is standard across almost all types of insurance and one which simply requires a policyholder to take actions that any reasonable and prudent individual would most likely take without instruction – i.e., to take reasonable steps to prevent further loss or damage. And it's generally an implied term of an insurance contract for policyholders to take reasonable care and act as though uninsured.

I'm also mindful that Mr S clearly understood the risk to his property without access to his policy information and took certain, albeit in my view insufficient, actions to mitigate the risk of further loss. But none of these actions were taken on the night of the bag theft, rather they were taken the following day. And when they were taken, Mr S seemed satisfied they were sufficient, despite them meaning his property was left at increased risk for a further night. Given this, I'm not persuaded that access to the policy terms at the point of sale would have resulted in Mr S taking any additional action.

So, in the particular circumstances of this claim and complaint, I don't consider that it's unfair or unreasonable for Admiral to decline Mr S' claim on the basis he didn't take sufficient steps to prevent further loss, despite the fact that Mr S didn't have access to the policy booklet at the time of taking out the policy. And I say this because I think Mr S ought reasonably to have taken those actions regardless. Because he didn't, Admiral's position was prejudiced, and so I'm currently of the view that it can fairly decline to cover Mr S' claim in these circumstances."

I asked both sides to send any further comments or evidence they wanted me to consider within two weeks.

Admiral responded to confirm it accepted my provisional decision and had nothing further to add.

Mr S responded to explain why he disagreed with my provisional findings. In summary he said:

- My provisional decision is based on the assertion he didn't take sufficient practical steps to mitigate loss, yet I haven't found against Admiral for failing to provide the terms and conditions at the point of sale as required.
- He gave examples of scenarios where it would be unfair to expect him to know what actions to take to prevent loss without access to the terms and conditions of his policy.
- He provided evidence that Admiral previously told him the terms and conditions were emailed to him as attachments at the point of sale. He says this shows they lied which is serious and needs to be dealt with.

As both sides have provided their responses to my provisional decision, I'm moving forward with my final 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.

I've also carefully considered the responses to my provisional decision. Having done so, my conclusions remain the same. I'll explain why.

I acknowledged in my provisional decision that Admiral had a duty to provide Mr S with the information he needed, at the right time so he could make informed decisions, by which in this case I meant providing the policy terms and conditions at the point of sale. I agreed that in only emailing the policy documents as attachments on 12 October 2023, and with the website being down on the weekend of 7 October 2023, that Admiral had failed to provide the documents quickly enough for Mr S to be aware of the terms at the point of the burglary. I also explained that there might have been hypothetical scenarios in which this failure might have led me to conclude it was unfair for Admiral to rely on a breach of a term Mr S wouldn't have reasonably been aware of, in order to decline his claim.

But I also explained that, in the particular circumstances of this claim, I thought Admiral could still fairly decline the claim based on Mr S' failure to mitigate the risk of further loss, despite its failure to provide the terms and conditions as attachments at the point of sale. And none of Mr S' subsequent points have caused me to change my mind here.

Ultimately, I remain of the view that Mr S didn't take sufficient steps to mitigate the risk of loss – which I think he ought naturally to have done regardless of access to the terms and conditions. And even if he'd received the terms and conditions at the point of sale as he ought to have done (and would have done had the website not been down) I'm still not persuaded he would have taken different actions to those which he actually took – for the reasons I set out in my provisional decision.

I can see that Admiral did incorrectly tell Mr S that the policy documents were emailed to him as attachments on 7 October 2023. Or at least, that this information contradicts what Admiral later told me directly – that the attachments were first emailed on 12 October 2023. Mr S says this clearly shows dishonesty on Admiral's part.

I've thought carefully about this, and I can understand Mr S' perspective and strength of feeling on the matter. But I can see that Mr S was indeed emailed with the terms and conditions on 7 October 2023. It's just that it was a link to the policy terms rather than attachments. So, on balance, I think it's more likely than not that Admiral was mistaken when it advised Mr S the terms were emailed as attachments on that date, rather than it being an intentional lie.

In any event, I consider that the key issue at the heart of this complaint is Admiral's decision on the claim. And for the reasons I've explained above, I think the decision it reached was ultimately fair in the circumstances.

My final decision

For the reasons I've explained above, and in my provisional decision, I don't uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 June 2024.

Adam Golding
Ombudsman