

The complaint

Mrs L complains that Red Sands Insurance Company (Europe) Limited declined her claim against her travel insurance policy.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here in full. In summary, Mrs L has an annual travel insurance policy underwritten by Red Sands. The policy began on 28 July 2022. Mrs L went on a trip with intended departure and return dates of 16 October 2022 and 20 October 2022 respectively.

On 20 October 2022, Mrs L was with her friend in the lobby of the hotel they had just checked out of, waiting for a taxi to the airport for their return journey. She says that there was a man on an adjacent table who went to a vending machine behind where she was sitting. The man dropped coins and she and her friend helped to pick them up. When the taxi arrived to collect Mrs L and her friend, she noticed that her bag was missing. Mrs L went to the airport, but the airline didn't allow her on the return flight without the correct documentation. Mrs L had to remain abroad for a further period of time to get replacement travel documents.

On 26 October 2022, Mrs L made a claim against her policy in relation to the theft of her bag and its contents, including her passport. Her claim also included unused and additional travel costs and additional accommodation costs.

Red Sands declined Mrs L's claim. It relied on an exclusion in the policy in relation to unattended items. Red Sands said that from Mrs L's description of events, it appears that her items were left unattended and out of her sight.

Mrs L said that she didn't in fact leave her bag unattended and out of her sight. She said that her bag was with her at all times. Mrs L said that her bag was next to her on the chair she was sitting on, and she didn't leave the chair. She said that a highly skilled thief caused a lapse in her concentration for a split second and grabbed her possessions without her noticing.

One of our investigators looked at what had happened. She didn't think that Red Sands had treated Mrs L unfairly in declining her claim. The investigator said that Red Sands had relied on Mrs L's initial description of what happened and reasonably concluded that Mrs L had left her bag unattended.

Mrs L didn't agree with the investigator. She said that she hadn't left her bag unattended and that it was by her side all the time. Mrs L says that she leaned over to pick up coins and that she didn't stand up or leave her seat. She asked that an ombudsman consider her complaint, so it was passed to me to decide.

My provisional decision

On 26 June 2023, I sent both parties my provisional decision in which I indicated that I intended to uphold the complaint. I said:

'the relevant terms and conditions

The starting point is the terms and conditions of the policy, the relevant parts of which say as follows:

'PERSONAL POSSESSIONS (POLICY B SECTION 5)

Personal Possessions

We will pay up to the amount shown on your schedule of cover for:

[...]

2. the original purchase price of any **possessions**, less an allowance for age, wear and tear, to cover **possessions** that are stolen, permanently lost or destroyed whilst on **your trip**

- for all **valuables** limited to the amount shown in the schedule of cover

- [...]

[...]

Personal Money

We will pay up to the limit shown on your schedule of cover for:

the replacement of stolen **money** or **cash** whilst on your trip

- **cash** is limited to the amount shown on **your** schedule of cover if it is lost or stolen whilst being carried on **your** person or left in a locked safety deposit box.

Provided

[...]

8. **you** have not left **money, cash, electrical items, eyewear, hearing aids, jewellery and watches** or **photographic equipment unattended** (including being contained in luggage during transit) except where they are locked in a safe or safety deposit box where these are available, or left out of sight in your locked holiday or trip accommodation. [...]

'LOSS OF PASSPORT AND TRAVEL DOCUMENTS (POLICY B SECTION 6)

We will pay up to the amount shown in the schedule of cover for:

1. the cost of an emergency travel document or replacement **travel document** on **your trip**.

2. the necessary costs of collecting your emergency or replacement **travel document** on **your trip**

if during **your** trip abroad your **travel documents** are lost, stolen or damaged beyond use

Provided:

[...]

4. **you** have not left **your travel documents unattended** (including being contained in **luggage** during transit) except where they are locked in a safe or safety deposit box where these are available or left out of sight in **your** locked holiday or **trip** accommodation. [...]

The policy defines '**Unattended**' as 'Left away from **your** person where **you** are unable to clearly see and are unable to get hold of.'

has the claim been declined unfairly?

The relevant rules and industry guidance say that Red Sands has a responsibility to handle claims promptly and fairly and it shouldn't reject a claim unreasonably. I intend to uphold Mrs L's complaint because I don't think that Red Sands treated her fairly or reasonably in declining the claim. I say that because:

- *Insurance policies aren't designed to cover every eventuality or situation. An insurer will decide what risks it's willing to cover and set these out in the terms and conditions of the policy document. The onus is on the consumer to show that the claim falls under one of the agreed areas of cover within the policy. If the event is covered in principle but is declined on the basis of an exclusion set out in the policy the onus shifts to the insurer to show how that exclusion applies.*
- *Subject to the policy terms, Mrs L's policy provides cover for certain items provided that she hasn't left those items unattended. I've set out above the definition of 'unattended' provided in the policy. Red Sands relied on the exclusion about unattended items in declining Mrs L's claim.*
- *I think that there's been some confusion about the circumstances of the theft here. Red Sands says that from Mrs L's description of events it appears that she left the stolen items unattended and out of her sight. Red Sands says that it used google images to view the lobby of the hotel and that the seating area is on the raised section and the vending machine on the lower section, next to the reception desk. It said that the dropped coins were on a different level than Mrs L's seat, with three steps and a pillar between the seating area and the vending machine. Essentially, Red Sands says that Mrs L must have left her seat to assist in picking up the coins and in doing so, left her handbag unattended.*
- *Mrs L took a photograph of the hotel lobby three days after the theft occurred. At this service's request, she has marked the photograph to show where relevant people or items were, including where she was sitting, where the man was standing and the location of the vending machine. The photograph shows that Mrs L's seat and the vending machine were on the same level. Mrs L says that her handbag was tucked between her body and the arm of her chair. She says that when she helped to pick up the dropped coins, she leaned forward to pick up a coin by the table then slid her seat backwards and bent down to pick up another coin, whilst remaining seated.*
- *This service has shared Mrs L's marked photograph with Red Sands and asked it to review the matter and reconsider its position, but Red Sands didn't respond.*
- *On balance, I accept Mrs L's description of what happened. The photograph she has provided shows the layout of the hotel lobby. Mrs L's description of the incident has been consistent throughout her claim.*
- *Based on Mrs L's description of the theft, I'm satisfied that she didn't leave her handbag unattended, as defined by the policy. It wasn't away from her where she was unable to clearly see and get hold of it. Mrs L describes what's known as a distraction theft. The fact that she wasn't able to prevent the theft doesn't mean that she left her handbag unattended.*
- *I think that Red Sands treated Mrs L unfairly in relying on the exclusion I've set out above to decline her claim. I think it should reassess Mrs L's claim in line with the remaining policy terms.*
- *It's not for this service to reassess Mrs L's claim but I can't see that her policy covers unused and additional travel costs and additional accommodation costs in the circumstances that arose here.'*

Responses to my provisional decision

Mrs L said that she had nothing further to add. There was an exchange with Red Sands which concluded in its confirmation that it had nothing further to add.

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.

Neither Mrs L nor Red Sands have provided any fresh information or evidence in response to my provisional decision. I therefore find no basis on which to depart from my earlier conclusions. For the reasons I've explained, I think that Red Sands treated Mrs L unfairly in relying on the exclusion and declining her claim.

Putting things right

For the reasons I've explained, Red Sand should reassess Mrs L's claim in line with the remaining policy terms, conditions and limits.

My final decision

My final decision is that I uphold Mrs L's complaint. Red Sands Insurance Company (Europe) Limited should now take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 10 August 2023.

Louise Povey
Ombudsman