

The complaint

Mr H complains that AWP P&C SA declined his claim against his 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, Mr H has travel insurance as a benefit of a bank account. He was on a trip from 1 June 2022 to 29 June 2022. One of his hotel stays was from 16 June 2022 to 18 June 2022.

Mr H says that he last saw his kindle on 17 June 2022, when he was reading it in his hotel room. Mr H moved hotels on 18 June 2022. At his next destination he couldn't find his kindle. On 20 June 2022, he phoned his previous hotel and it told him that it hadn't been found.

In July 2022, Mr H made a claim against his policy. AWP declined the claim. It relied on an exclusion in the policy in relation to unattended items. Mr H pursued his complaint. In response to Mr H's complaint, AWP offered him compensation of £35 in relation to service issues.

Mr H says that he last saw his kindle in his locked hotel room, so his claim comes within the policy terms. He wants AWP to pay his claim.

One of our investigators looked at what had happened. She thought that AWP hadn't acted reasonably in declining Mr H's claim. The investigator said that it wasn't reasonable for AWP to rely on the exclusion to which it had referred. She said that there was no indication that Mr H had left his kindle in a public space. The investigator accepted that the hotel room wasn't Mr H's after he left the hotel but the last time he saw his kindle was in his hotel room. She said that there was nothing to indicate that Mr H intentionally left his kindle in the hotel room and it's understandable that he didn't notice it was missing until he went to use it.

AWP didn't agree with the investigator. It reiterated that the policy excludes cover for loss or theft to valuables left unattended and that Mr H didn't take all possible care to safeguard against loss or theft, as required by the policy. AWP asked that an ombudsman consider the matter, so it was passed to me to decide.

My provisional decision

On 6 June 2023, I sent both parties my provisional decision and indicated that I didn't intend to uphold the complaint. I said:

“the relevant terms and conditions

The starting point is the terms and conditions of the policy. Subject to the policy terms, Mr H has cover for the loss or theft of valuables. There are certain exclusions, the relevant one for present purposes says as follows:

‘What is not covered

[...]

2. Loss, theft of or damage to **valuables** left **unattended** at any time (including in a vehicle or the custody of carriers), unless deposited in a hotel safe, safety deposit box or left in **your** locked accommodation.’

‘Special conditions relating to claims

In addition to the ‘General claims information required’ shown under the ‘Making a claim’ section on page 19, where appropriate, **you** must also:

[...]

4. Take suitable precautions to secure the safety of **your baggage** (including **valuables**), and must not leave any items unsecured, **unattended** or beyond **your** reach at any time in a place to which the public have access.’

‘Unattended’ is defined as ‘[...] when **you** are not in full view of and not in a position to prevent unauthorised interference with **your** property or vehicle.’

‘General conditions

[...]

11. **We** may not pay **your** claim if **you** do not:

a. take all possible care to safeguard against **accident**, injury, loss, damage or theft

[...]

has the claim been declined unfairly?

The relevant rules and industry guidance say that AWP has a responsibility to handle claims promptly and fairly and it shouldn’t reject a claim unreasonably. I don’t intend to uphold Mr H’s complaint and I’ll explain why.

- 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.
- I’ve set out above the relevant policy terms. I think that the cover and exclusions are set out clearly in the policy.

- *Based on what I've seen, the circumstances of Mr H's loss are not certain. That's not unusual in a claim like the one here. Mr H says that he last saw his kindle when he was using it in his hotel room on 17 June 2022. Mr H says that he left it on the arm of a chair when he went out for an evening meal. In his claim form, Mr H said that the loss occurred at 10.15 am on 18 June 2022. I assume that's the time he checked out of the hotel. But it wasn't until Mr H next wanted to use his kindle when he was in a different hotel that he realised it was missing. It's not clear to me exactly when that was, but on the afternoon or evening of 20 June 2022, Mr H phoned his previous hotel and enquired about the whereabouts of his kindle, so it was sometime before then.*
- *Based on what I've seen, Mr H's kindle was lost or stolen between the early evening on 17 June 2022 and sometime before the afternoon or evening of 20 June 2022. I think that's the relevant period here.*
- *There's no evidence to suggest that Mr H's kindle was stolen from his locked hotel room before he checked out of the hotel on 18 June 2022. With the benefit of hindsight, Mr H thinks that he left his kindle in the hotel room when he moved to a different hotel. I agree with AWP that after Mr H checked out of his hotel, the room wasn't his room – he had no access to it and he wasn't able to lock it. So, if Mr H left his kindle in his hotel room, it was left unattended after he checked out of the hotel.*
- *On balance, in the circumstances that arose here, I don't think that AWP acted unfairly or unreasonably in relying on the exclusion in relation to unattended valuables. I think it was reasonable for AWP to conclude that it was more likely than not that at the time of the loss, Mr H's kindle was unattended, as defined by the policy. That is, Mr H's kindle wasn't in his full view and he wasn't in a position to prevent unauthorised interference with it. There's nothing to indicate that Mr H's kindle was in a hotel safe, safety deposit box or in his locked accommodation after he had checked out of the hotel.*
- *In any event, I think that AWP can rely on both the special and general conditions I've set out above and decline Mr H's claim on the basis that he hadn't taken suitable precautions to secure his kindle or all possible care to safeguard against loss.*
- *I don't think the fact that Mr H didn't leave his kindle in a public space or that there's nothing to suggest that Mr H left his kindle in his hotel room intentionally alters the outcome here. For the reasons I've explained, I think that AWP acted fairly and reasonably in relying on the exclusion I've set out above.'*

Responses to my provisional decision

We didn't receive a response from Mr H. AWP said 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 Mr H nor AWP has 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 don't think that AWP acted unfairly or unreasonably in declining Mr H's claim.

My final decision

For the reasons set out in my provisional decision and referred to above, my final decision is that I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 August 2023.

Louise Povey
Ombudsman