

The complaint

H complains that U K Insurance Limited (“UKI”) declined its claim on its commercial property insurance policy following a break in.

Mr S is a director of H and brings this complaint on its behalf.

What happened

Mr S had commercial property insurance for his business – H, which was underwritten by UKI. In September 2022 there was a break in at H’s premises. Damage was caused to the building and there was stock, equipment and cash stolen.

Mr S made a claim on H’s policy, however it was declined by UKI. It said the locks on the door of the premises didn’t comply with the conditions in the policy, which meant there would be no cover for the claim. It also said that as the key to the safe had been kept on the premises, there would have been no cover for the money stolen from the safe any way, as this was also an exclusion.

Mr S didn’t think this was fair and made a complaint, but RSA didn’t uphold it. So he brought H’s complaint to this service.

Our investigator considered the issues and recommended the complaint be upheld in part. She said that while the security condition may not have been adhered to, this wasn’t material to the loss. She said as the lock had been cut off, having the correct lock wouldn’t have prevented the theft. So she thought UKI should reconsider the claim for the stolen contents and damaged door. However she thought it had acted fairly by declining the claim for the stolen money from the safe, as the key had been stored in the premises and used to access the cash by the thief.

Mr S accepted our investigator’s outcome. However UKI didn’t. It said the locks on H’s door didn’t comply with its security condition and it said if the correct locks had been used then the theft would likely have been prevented. It asked for the complaint to be reviewed by an ombudsman.

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.

UKI has relied on the following condition in the policy to decline H’s claim:

‘8 Security Minimum Protections

1 on timber final exit doors:

a if single leaf, a mortice deadlock conforming to BS3621 with matching boxed steel striking plate;

b if double leaf:

i on the first closing leaf, flush or barrel bolts, the latter at least 200mm (8") long, or key operated locks or bolts, fitted top and bottom in every case; and
ii on the second closing leaf, a mortice deadlock conforming to BS3621 with matching boxed steel striking plate, or a substantial padlocking bar and good quality close shackle padlock; and
c if single or double leaf, and also outward opening, hinge bolts fitted top and bottom.'

It said H's door didn't meet point b or point c. Mr S disputes that the bolts weren't 200mm long, however accepts that there weren't hinge bolts fitted at both the top and bottom of the door, as required by point c. So it seems from this that point c wasn't met.

However, at this service we don't just consider the terms and conditions of a policy. We also consider if these have been relied on fairly in the circumstances of a complaint. And as part of this, we'd consider not just if a condition had been Met, but whether non-compliance with the condition was material to the loss being claimed for.

I've looked at photos of the door that was broken into. And I can see that the thieves fully cut out one of the locks. Further the initial report from the loss adjuster stated as follows:

'the rear door lock has been cut out and the timber door forced open'

From this, it appears that the thieves may have initially been unsuccessful at breaking the locks, so instead cut out the entire lock instead. And they had equipment to enable them to do this. Considering the level of force used, and that the door itself was cut into, I don't think that compliance with the security condition would have prevented the break in from happening. As the level of force and equipment used would have likely been successful even where two hinge locks were in place.

When relying on a condition to decline a claim, we'd expect an insurer to demonstrate both non-compliance with the condition and that if the insured had complied, it likely would have prevented the loss. Based on the above, I don't agree UKI has shown that compliance with the condition would have stopped the break in. I therefore don't think it acted fairly by relying on this condition to decline the claim.

Based on this, I agree with our investigator that UKI should reconsider the claim for the stolen contents and damage to the door, without applying the security condition.

However UKI also declined H's claim for the money stolen from the safe, due to the following condition:

'It is a condition precedent to Our liability that all keys or notes of combinations of safes or strongrooms will be in Your custody or that of an authorised employee during Business Hours and not left in the Premises out of Business Hours.'

As the key to the safe was stored in the premises over night and was used by the thieves to access the money, I agree it's acted fairly by applying this condition and won't ask it to pay H's claim for the stolen money.

My final decision

For the reasons I've given, I uphold H's complaint and direct U K Insurance Limited to reconsider its claim for the damage to the door and stolen items, without applying the security conditions. With the exception of the claim for the stolen money.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S, on behalf of

H, to accept or reject my decision before 15 January 2024.

Sophie Goodyear
Ombudsman