

The complaint

S complains about Hiscox Insurance Company Limited's decision to decline a claim made under their business insurance policy.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

S is a surveying business and has insurance underwritten by Hiscox which covers public liability, employer's liability and the business's equipment, amongst other things.

S made a claim in April 2023 when a piece of surveying equipment was stolen whilst they were working away from their business premises.

Hiscox declined the claim on the basis that the equipment had been left unsupervised.

S complained about this, but Hiscox maintained their position, pointing out the relevant terms and conditions of the policy. So, S brought their complaint to us.

Our investigator looked into it and didn't think Hiscox had done anything wrong.

S disagreed and asked for a final decision from 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.

There's absolutely no dispute in this case about what the policy says or what the circumstances leading to the claim were.

The policy says Hiscox will not cover losses of property or equipment which are outside of a locked room or building if they are left unattended. An unattended item is then defined as being "*not under (your) personal supervision*".

The policy also contains a general requirement that policyholders should take all reasonable steps to prevent or mitigate any loss or damage. Which is not an unusual condition and appears in most insurance policies which provide cover for loss or damage of possessions.

S have been very clear all along about what happened to their equipment. A surveyor attended to do a survey. He parked in a public place, took equipment out of the car and placed it behind a wall, and then walked around 10 metres across the street to view the survey site.

The surveyor says he noticed a car pulling up and parking close to the wall. He turned his back and crossed the road. This took a few seconds, whilst his back was turned, but when he turned back around, the equipment was by then gone.

That's what the surveyor told Hiscox when he made the claim. And his version of events has been consistent and cogent all along. It's a perfectly credible account and Hiscox have not questioned that it is exactly what happened. The crime was reported to the police and the surveyor was able to give them the licence number of the suspect car.

The only decision I have to make then is whether it's reasonable for Hiscox to decline the claim based on the notion that the equipment was left unattended – i.e., unsupervised – or that the surveyor didn't take reasonable steps to prevent the loss..

The terms of the policy might be regarded as somewhat ambiguous. When exactly is an item under someone's personal supervision? And when is an item "*unattended*". How far away would one need to be? Is it necessary to be close enough that one could intervene if someone were stealing the item? Or only that one could observe the theft and/or make it clear to the perpetrator that one was observing it?

Where a policy term is ambiguous, we would tend to say that it should be read in the way most advantageous to the customer, not the insurer. The insurer is the expert – and wrote the terms. The customer might expect that if they could reasonably and sensibly have read a policy term in a particular way when they chose to buy the policy, then the insurer should go with that reading of the term when responding to a claim, for example.

I'm not sure that in this case the policy terms could reasonably be said to lead to real ambiguity about whether the loss of the equipment should be covered.

The surveyor admits turning his back on the equipment, which he left behind a wall. As he said, he was close by throughout. But he wasn't in a position to intervene or to observe the theft directly and he didn't discourage the thief by making it clear that he or she had been seen. By the surveyor's own account, the equipment had gone by the time he turned back around.

I fully understand that this is a finely-balanced argument. The surveyor could make a perfectly respectable case to say that he was always within a few metres of the equipment, knew where it was, had taken steps to try to hide it from view (unsuccessfully as it turned out, but nonetheless) and was only facing away from the scene of the crime for a very limited time. And he might say that to expect any more than that would be unreasonable – the equipment would more or less have to be carried at all times.

However, I don't think that fundamentally one could be said to have equipment under one's supervision – as the policy requires – if in fact a thief managed to steal it without being seen in the act, as it were.

I'm also not convinced the surveyor could be said to have acted reasonably to prevent or mitigate the loss. He took the equipment out of his vehicle before he went across the road to look at the site, rather than leave it in the vehicle until he got back.

He was aware at that point of the car parking nearby. He was aware his equipment was valuable and a possible target for thieves – as he said to Hiscox when he bought the policy from them and when he reported the loss.

And he took the decision to turn his back on the scene for a period of time – a very short period, but clearly enough to allow the thief to take the equipment before the surveyor clocked that it was being stolen or had gone missing.

I'm also aware that in a conversation with Hiscox' adviser when he bought the policy, the surveyor specifically asked what would happen if equipment were stolen whilst surveys were being carried out and the equipment was being used.

He was told that Hiscox would meet the claim if equipment was stolen whilst the user was *"taking full responsibility"* for the equipment and *"not just leaving (the equipment) in random places"*.

I think that conversation to some extent clarified for the surveyor what would be covered and what would not – and gave him (at the very least marginally) a better understanding of how the terms would be applied.

On balance then, I'm satisfied it wasn't unfair or unreasonable for Hiscox to decline S's claim on the basis that the equipment was unattended and/or that the surveyor didn't take reasonable steps to prevent the loss – which amounts ultimately to the same thing.

My final decision

For the reasons set out above, I don't uphold S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 13 September 2023.

Neil Marshall
Ombudsman