

The complaint

Mrs G complains that West Bay Insurance Plc (West Bay) refused to pay a claim on her motor insurance when her vehicle was stolen. References to West Bay include other individuals and organisations acting on its behalf.

What happened

Mrs G had a motorhome insured with West Bay. The motorhome was stolen from outside her house and she made a claim on her policy. West Bay asked Mrs G to return all the keys for the motorhome and the V5 document. Mrs G's husband called West Bay (although the call was then passed to Mrs G) to say that the spare key was in a hidden fake bottom of the wardrobe/cupboard which was in the living area of the motorhome. Mrs G told West Bay that the cupboard was full of coats, waterproofs and towels and outdoor footwear was stored on the bottom ledge of the cupboard. Mrs G explained to West Bay that she hadn't even been aware the key and the V5 document were in the cupboard.

After looking into what happened West Bay repudiated (declined) the claim as a spare set of keys was left in the motorhome.

Mrs G wasn't happy about this and complained to West Bay. West Bay said the decision to repudiate the claim was based on the fact that the keys were left in the vehicle at the time of the theft. West Bay said that as this was a breach of the terms and conditions of the policy, the decision to repudiate the claim was correct. West Bay said Mrs G advised this wasn't made clear to her and that she did not receive any policy documents, and it had raised this with Mrs G's broker who would be responsible for sending out any details related to the policy and its terms and conditions.

West Bay partly upheld Mrs G's complaint for the delay in responding to her and a failure to honour promised call backs regarding the repudiation and offered her £150 compensation.

Mrs G wasn't happy with West Bay's response and complained to this service. Our investigator upheld her complaint. She said that The Insurance Conduct of Business Sourcebook (ICOBS) says it's unreasonable for an insurer to decline a claim unless the claim is connected to the breach. That's to say that if a claim is declined based on an exclusion then that exclusion must be relevant to the claim.

The investigator said West Bay relied on the exclusion that cover would not be provided if the key was left in the vehicle making it easier for the vehicle to be stolen. Looking at all the evidence, the investigator didn't think the spare key was used to steal the motorhome. And so she didn't think it fair for West Bay to rely on the exclusion regarding keys left in the vehicle or lack of reasonable care as the spare key hidden in the fake bottom of the cupboard was not relevant to the theft of the motorhome, as she didn't think the spare key was used to steal the vehicle.

The investigator said West Bay should settle the claim in line with the policy terms plus interest and pay Mrs G £250 compensation for the distress and inconvenience caused to her in the decline of her claim.

West Bay didn't agree with the investigator's suggestion and so the complaint has been passed to me. Mrs G wants her claim to be settled.

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 uphold Mrs G's complaint. I'll explain why.

When a consumer makes a claim the terms and conditions of a policy will set out what the insurer is and isn't responsible for. If the insurer doesn't think it should pay a claim, it's for that insurer to show why the claim shouldn't be met, for example, if an exclusion applies.

When an insurer doesn't pay a claim, our role is to see if we think it's fairly declined the claim. When doing so we'll look at the circumstances, policy terms and industry guidelines such as ICOBS, which is issued by the Financial Conduct Authority.

ICOBS says that an insurer can only decline a consumer claim due to a breach of policy condition if it's material to the loss.

Mrs G's terms and conditions document with West Bay said at page 17:

"What is not covered

...Loss of or damage to the insured vehicle...while the insured vehicle is left unattended arising from theft or attempted theft when:

- 1. ignition keys have been left in or on the insured vehicle..."*

And at page 35:

"General Conditions

...2. Looking after your vehicle

...You or any person in charge of the insured vehicle are required to take all reasonable care to safeguard it and its contents from loss or damage, for example the vehicle should not be left unlocked."

Mrs G was able to obtain CCTV footage of the theft from a neighbour. She says this shows it took the thief just 32 seconds to steal the motorhome, which wouldn't have given them time to find the keys. There was a wheel clamp on the vehicle which was removed and security lighting which was moved. Mrs G says the whole thing took just over 60 seconds

I've watched the CCTV footage and it's very difficult to make out what is happening. However there is no movement for most of the footage and some movement for around a minute when the vehicle is stolen, which supports that the theft happened very quickly. And I have no reason to doubt Mrs G's interpretation of what it shows, bearing in mind that she will know the area and is more likely to be able to interpret what happened.

We don't know for sure how long it took to break into the motorhome and drive it away. But I don't think a thief would go to the time and trouble of moving the sensor light, removing the wheel clamp (with force), breaking into the motorhome, searching the separate living area of the motorhome on the off chance a spare key was somewhere in it, and then finding it hidden in the false bottom of a full cupboard. So I think it's more likely that this wasn't an

opportunistic theft by someone who happened to pass by but a theft planned to some extent. And it also happened in the early evening when people living in the area were likely to be still up and about. Nobody saw the theft, which supports that it was quick and done by someone who knew what they were doing.

Mrs G has provided a lot of information that the make and model of her motorhome is known to be easy to steal, including an email from the Director of a motorhome repair company:

"My career as a motorhome engineer spans over 20 years and in my experience, the most commonly stolen motorhome seems to be the [Mrs G's make/model] based motorhomes.

I have been working on [Mrs and Mr G's] motorhome several times and have never, in all of the time I have spent inside their vehicle, come across their spare key. In my professional opinion, it would have taken the thieves longer to find a hidden spare key, than it would to steal a motorhome in the traditional way."

Mrs G also provided a number of newspaper articles and social media posts showing how apparently easy it is to steal the make and model of her motorhome, including that skeleton keys are readily available to buy.

These support the assertion that the thief used a method a lot quicker than looking for a spare key hidden in the motorhome. If Mrs G didn't know the spare key was in the cupboard, and she never came across it when using the motorhome, then I think on balance, it's highly likely that the thief didn't either.

I think Mrs G's statement that she didn't know the keys were in the motorhome is supported by the fact it was Mr G who called West Bay to explain the whereabouts of the spare key, not Mrs G. He is not a named driver or joint policy holder.

For me to say it was fair and reasonable for West Bay to decline the claim, I need to be satisfied that leaving the key in the motorhome made it possible or easier for the thief to steal it. The stolen motorhome has never been recovered so we can't say for certain the key wasn't used, but on the balance of probabilities and taking all the evidence into account, I don't think the thief found or used the key.

This service also consider whether the "keys in car" exclusion (which we think is a significant exclusion) was drawn to the customer's attention when the policy was sold – if not, we would need to consider whether the consumer would have acted differently if it had been. This could result in us upholding the complaint against the insurer, if it was their responsibility to highlight the clause.

We think it is good industry practice for the insurer to provide some sort of policy summary or key facts document, which includes this clause as a significant exclusion or limitation.

Mrs G took out the policy through a broker. She says the "keys in vehicle" exclusion wasn't brought to her attention in her phone call with the broker. This is an issue for the broker, and I understand West Bay has brought it to their attention. Mrs G was provided with a policy summary document which doesn't mention the exclusion clause. It was mentioned at page 17 of the terms and conditions document, but I don't think this is sufficient to properly bring a significant exclusion clause to Mrs G's attention. Mrs G told this service she would have acted differently had she known about the "keys in vehicle" clause and would have taken appropriate actions to ensure that a spare key wasn't anywhere near the motorhome.

Finally, if there is an allegation that the insured failed to take reasonable care and that this led to the theft, the test we apply is one of recklessness as applied by the court in *Sofi v*

Prudential. If the insured didn't consider that there was a risk involved in what they have done, then it is arguable that they weren't acting recklessly and therefore that the complaint should be upheld. So, the insured must have recognised that there was a risk and taken no steps to avert it in order to be considered to have acted recklessly and therefore not having taken reasonable care. Mrs G says she didn't know the keys were in the motorhome. She says the motorhome was parked on her drive, where there was security lighting, and secured by a wheel clamp. I think by doing this Mrs G did take reasonable care of her motorhome.

So taking all the circumstances into account, I don't think West Bay acted fairly and reasonably in declining Mrs G's claim and I think they need to put things right and also compensate Mrs G for the distress and inconvenience caused to her.

My final decision

For the reasons given above I uphold Mrs G's complaint. I require West Bay Insurance Plc to settle the claim in line with the policy terms plus simple interest of 8% from the date the claim was declined to the date of settlement. If West Bay Insurance Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs G how much it's taken off. It should also give Mrs G a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

I also require West Bay Insurance Plc to pay Mrs G £250 in addition to the £150 it has already paid her in compensation for the distress and inconvenience caused to her in the decline of her claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 22 March 2024.

Sarah Baalham
Ombudsman