

The complaint

Mrs K and X have complained that their claim was declined by esure Insurance Limited ('esure') under their home insurance policy following a theft.

What happened

Mrs K and X experienced theft of their car from the drive of their property, as well as theft of personal belongings from the car at the end of July 2023. They reported the car theft to the police and to their motor insurers. They then reported the theft of the personal items to esure some days after the theft. Mrs K and X said that the car had been left locked and secure. They discovered that the thieves had taken the car by bypassing the car's fitted security systems. A part of the car's tracking device was later found some distance away, however none of Mrs K and X's personal belongings were found.

esure declined Mrs K and X's claim as it considered that it was excluded under the terms of the policy as the car hadn't been taken through force and violence. It maintained its stance following complaint by Mrs K and X, who then referred their complaint to this service. The service's investigator didn't uphold Mrs K and X's complaint. She thought that the reason given by esure for declining their claim was fair and reasonable and in line with the terms of the policy. The investigator said that the CCTV evidence produced by Mrs K and X suggested that no force or violence was used. However, she thought that esure should be given the opportunity to see the full CCTV evidence in order to review the matter.

Mrs K and X were unhappy with the outcome of their complaint and the matter has therefore been referred to me to make a final decision in my role as Ombudsman. I recently issued a provisional decision for this complaint and explained why I was minded to uphold Mrs K' and X's complaint as follows; -

'The key issue for me to determine is whether esure applied the terms and conditions of its policy in a fair and reasonable manner in declining the claim. On a provisional basis, I don't consider that it did, and I'll explain my reasoning below.

I turn firstly to Mrs K and X's submissions regarding this matter. They said that at the time of theft, the vehicle was locked, properly secured and they still had both sets of keys. They said that the thieves had unlocked the vehicle before approaching the car. Mrs K and X noticed the theft shortly afterwards and immediately telephoned the police. Mrs K and X were able to provide CCTV footage of the incident, as well as the police officer's view of events. They said the car insurance claim was handled promptly under their motor insurance, and their gap insurers had also assisted, however esure declined their claim.

Mrs K and X said that they were due to travel on the day of the incident for a special event the next day. The vehicle therefore had suitcases with clothes and outfits in it, and the event itself was an expensive treat. They said they lost many sentimental items that couldn't be replaced, as well as essential every-day items. esure declined the claim as it said no force or violence had been used by the thieves. Mrs K and X said they'd taken pride in the security measures used to reduce the risk of theft. Mrs K said she'd never made a claim on their home insurance. She said they did everything properly to ensure the vehicle was safe. Mrs K

and X said they were 'deeply concerned and upset that despite this, our insurers have chosen to decline our claim when we have provided clear evidence of theft as well as full receipts for all items taken'.

'Mrs K and X considered that the decision to decline their claim based on a lack of 'force and violence' was unreasonable and unfair, and discriminated against owners of keyless vehicles. Mrs K added that she wasn't sent a copy of the policy wording to her home address when she took out the policy, which she thought would have drawn her attention to the issue, and she wouldn't then have taken insurance cover out with esure. Mrs K and X felt that the wording in the policy was 'grossly outdated and unfair' in the circumstances. They said the thieves had come onto their property uninvited and wearing intimidating clothing. They also made it clear that the thieves didn't access the vehicle through ordinary means. They referred to caselaw to support the position that using a device to overcome a vehicle's security was enough to count as 'forceable and violent means'.

In conclusion, Mrs K and X said that esure's decision had caused them much upset, worry and anxiety. They felt they were being punished through no fault of their own when they were the victims of crime. They believed the policy wording was outdated and unfair to modern day vehicle owners. They also felt they'd done all in their power to secure their vehicle, home, and contents. They said that their family was still terrified by the events, and the decision by esure not cover the claim exacerbated this.

I now turn to esure's submissions regarding this matter. It said it had given thorough consideration to Mrs K and X's claim form and circumstances. It said that the policy provided cover for theft or attempted theft, however theft from a locked motor vehicle was specifically excluded from cover unless someone had used force and violence to break into the vehicle. It said it realised that an insurance claim could be a stressful experience and that it aimed to provide a level of service to reduce stress and inconvenience. esure said it was unable to agree that force and violence was used to access the car.

esure said that if the CCTV in its entirety was sent to it, then it would be happy to review the matter further. However, it said that it didn't know for certain if the vehicle was locked or how entry to the vehicle was gained, apart from the driver door being opened slowly and without any resistance. It said that the policy didn't state that it would accept claims for theft via deception from electronic devices, so considered that it had acted in a fair and reasonable manner in declining this claim.

I now explain the reasoning for my provisional decision. The starting point for the decision is the specific wording of the insurance policy. Here, esure relied on an exclusion in the policy under the heading 'What is not covered?' which states as follows; 'We will not pay for the following...theft or attempted theft from an unattended motor vehicle unless the items are hidden from view in the boot, or closed glove compartment, all windows are closed, and all doors are locked which was broken into using force and violence.' I note from esure's final response letter that it had declined Mrs K and X's claim as it considered that no force and violence had been used.

Firstly, I agree with the investigator in the circumstances that it would be fair and reasonable to expect Mrs K and X to supply the full CCTV coverage, in order that esure may review the matter in detail. Nevertheless, on a provisional basis, I consider that Mrs K and X have provided persuasive evidence. This comprised of their own written evidence, CCTV clips of some of the events, as well as the view of events given by the relevant police officer. Mrs K and X were adamant that they'd locked the car, and the police officer was clear that it had been stolen through bypassing the vehicle's security measures. From this evidence, it's clear that force and violence in the traditional sense wasn't used by the thieves in breaking into Mrs K and X's car and in taking the car and its contents.

Nevertheless, I provisionally conclude that the car lock had been 'forced' open by thieves. The purpose of the owners' key was no doubt to allow the car to be secured to avoid theft, and here, this had been bypassed by thieves. In the circumstances, and on a provisional basis, I'm satisfied that Mrs K and X's car was broken into by thieves using 'force'.

As to whether the thieves also used violence, the ordinary accepted meaning of the word 'violence' relates to behaviour involving force with an intention to damage. The intention in this case was to steal, but not necessarily to damage the vehicle in the process. I consider that the forcing of the lock through technological means demonstrates clear criminal intent. On balance however, I don't consider that the strict meaning of the word 'violence' is fulfilled. In the circumstances, and on a provisional basis, I'm not satisfied that Mrs K and X's car was broken into by thieves using violence.

As such, the exclusion outlined above may appear to defeat the claim. Unfortunately, thefts involving keyless theft have become increasingly common and the wording of Mrs K and X's policy doesn't account for this scenario. Notwithstanding Mrs K's argument that she hadn't seen the wording of the policy, it's unlikely that a consumer would realise that keyless car theft was being excluded. In addition, the wording, 'which was broken into using force and violence' is somewhat disjointed from the remainder of the exclusion.

I consider it unfair and unreasonabl[e] for esure to rely on the part of the exclusion relating to 'force and violence' for a theft involving a forced start to the car, which was achieved using sophisticated means. It's worth adding that the service determines cases based upon what we consider to be fair and reasonable, and not always based only on the strict wording of the contractual terms and conditions. On a provisional basis, I therefore consider that it would be unfair for Mrs K and X's otherwise apparently genuine claim to fail on the basis of the requirement of violence in addition to force, bearing in mind the nature of this crime.

For the above reasons, I provisionally uphold this complaint and require esure to reconsider Mrs K and X's claim without further reference to the part of the exclusion clause relating to 'force and violence', and in line with the remaining policy terms. If esure then determined that the policy otherwise covered the claim, then I'd expect it to settle the claim in line with the policy and any relevant excess amount. If esure thinks there's a different valid exclusion which would allow it to decline the claim, then it should explain this to Mrs K and X. I would nevertheless require Mrs K and X to supply the full CCTV coverage in order that esure may consider the claim in detail.'

In my provisional decision, I asked both esure and Mrs K and X if they had any further comments or evidence they would like me to consider before I made a final decision.

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.

Both Mrs K and X and esure have accepted the provisional decision. Neither party has provided any further submissions or evidence.

In all the circumstances, I've concluded that the provisional decision provides a fair and reasonable outcome to the matter and I uphold Mrs K and X's complaint as follows.

My final decision

For the reasons given above, I uphold Mrs K and X's complaint and require esure Insurance Limited to do the following: -

- reconsider Mrs K and X's claim, without further reference to the part of the exclusion clause relating to 'force and violence', and in line with the remaining policy terms.

Under the rules of the Financial Ombudsman Service, I'm required to ask X and Mrs K to accept or reject my decision before 27 March 2024.

Claire Jones
Ombudsman