

COVER EXCLUSION AND THEFT BY FALSE PRETENCES

Selling items such as cars and other valuable articles on the internet has become very popular. Unfortunately, criminals have not remained far behind in exploiting naïve sellers.

An interesting case is discussed in the latest Short-term Ombud's Briefcase.

Mr. R placed his vehicle for sale on a website. He was contacted by a potential buyer. They proceeded with the necessary paperwork in order to transfer ownership. When Mr. R received a bank automated SMS indicating that the agreed purchase price had been deposited into his account, he released the vehicle to the buyer. When the funds did not reflect in his account, Mr. R contacted his bank. The bank informed him that EFT transactions can take up to three days to clear and reflect in the bank account. The bank did not confirm that the funds had cleared before the vehicle was released. Needless to say the funds never appeared in Mr. R's account.

The policy wording specifically excludes cover for any loss, damage or liability, directly or indirectly arising from selling the insured property. More specifically, cover is excluded in circumstances where the insured releases the insured property to a potential buyer without prior confirmation from the bank that valid and legal payment had been made. The clause in the policy wording is illustrated by the following example;

People sometimes "buy" items using fraudulent cheques or counterfeit money. In order to avoid becoming a victim of this kind of theft, you need to make sure that your bank confirms that the cheque has been honoured, or that the money is not counterfeit, before you give the item to the other person.

After reviewing all the information and documents furnished by both parties, the Ombudsman upheld the insurer's decision to reject the claim. While an insurance policy will cover the insured in the event of a loss, including theft, this cover is typically subject to specific exclusions which are set out in the policy wording. The onus is on the policyholder to familiarise himself with the terms and conditions of the insurance contract and to ensure compliance with the terms and conditions. The policy exclusion in this case was very clear. The insurer further furnished the office with proof that the policy terms and conditions were sent to the complainant at the inception of cover, in accordance with the Policyholder Protection Rules.

The Ombudsman pointed out that an SMS from the bank is not irrefutable transactional proof of activity on a bank account. In fact, to ensure that its users are informed and aware of the various scams that are out there, some websites offer precautionary advice. One of the scams highlighted by these sites is the use of a commercial SMS messaging service to send the seller an apparently legitimate confirmation that they have deposited money into his bank account.

This SMS is a convincing replica of the ones a banking institution might send when someone makes a deposit into your account. Sellers have therefore been advised not to release their goods until the deposit has actually reflected in their bank account. In the view of the Ombudsman this practice goes hand in hand with the insured's duty to exercise due care and precaution to prevent and/or minimise loss or damage. As a result the Ombudsman could not fault the insurer.