



INSURANCE & FINANCIAL SERVICES  
**OMBUDSMAN**

## Duty of Care

The obligation to take “reasonable care” of insured property is a standard requirement in house, contents, motor vehicle and travel insurance. The reasonable care obligation is included to ensure that the insured person does not fail to take precautions, just because they are insured.

In some situations, an insured’s conduct may contribute to the loss of their property. Therefore, insurers include policy conditions to limit or exclude liability if the insured does not take reasonable care of, or is reckless with, their property.

To decline a claim under such a policy condition, an insurer must prove the insured’s conduct was grossly careless, grossly negligent, or reckless. Proof of mere negligence or carelessness is not enough. This is because insurance, by its very nature, protects the insured against negligence and mere inadvertence.

The insured should take the necessary precautions they know ought to be taken, whether or not they are covered against loss by insurance.

### “Reasonable care” terms in policies

The reasonable care clause will look different in each policy wording. Here are some examples of what it might look like:

- **House: “Care of insured property:** *You must maintain the insured property in good repair and take all reasonable steps to safeguard it.”*
- **Contents: “Protecting your property:** *You and anyone else covered by this policy must take every care to protect all property covered by this policy.”*
- **Motor Vehicle: “Reasonable care:** *You must always take reasonable care to avoid circumstances that could result in a claim. You won’t be covered if you are reckless or grossly irresponsible.”*
- **Travel: “Care of Your Baggage, Personal Effects, Money and Documents:** *You must take reasonable care to protect your baggage, personal effects, money and documents and to prevent loss or damage.”*

### Legal test for reasonable care

The courts in New Zealand consider what a reasonable person would have done in the same circumstances as the insured. The duty of reasonable care will be breached where the insured disregarded a significant risk, which would have been obvious to the reasonable person. However, each case is decided on its own facts.

In general terms, the question is whether the reasonable person would, in all the circumstances, have done what the insured did in exposing themselves to the risk that led to the damage or loss.

### What to do:

1. Read your policy. Understand what “reasonable care” means, and ask your insurer if it is unclear.
2. Understand your obligations and responsibilities in terms of exercising reasonable care for the safety and security of your property.
3. Remember to consider the risks to your property, especially when on holiday.

## Examples of declined claims referred to the IFSO Scheme:

- Keys left in unlocked vehicle – vehicle stolen
- Valuables left on beach while owner swimming – items stolen
- Valuables left in full view in vehicle while parked in quiet area – vehicle broken into and items stolen
- Windows left open when house vacant – up long driveway out of sight of street – house burgled
- Door left unlocked – house burgled
- Damage to house through lack of maintenance
- Unattended baggage stolen in airport terminal
- Damage to vehicle when vehicle became stranded while being driven on beach

## How is it decided whether reasonable care has been taken?

The following are examples of factors taken into account when deciding whether an insured's actions have been grossly careless, grossly negligent, or reckless:

- the environment where the loss or damage occurred e.g. in a crowded public place or an isolated beach or up a long driveway
- whether the action which led to the loss was an inadvertent or habitual practice;
- the period of time an unlocked vehicle was left unattended
- the value of the items
- the time of day/night
- the proximity of place of theft to your house, neighbours, or the public
- the locality and its known reputation
- the general foreseeability of the risk – public knowledge of the likelihood of loss/damage.