

The complaint

Mr S complained that his claim was unfairly declined under his home insurance policy with AXA Insurance UK plc ("AXA").

What happened

Mr S' quad bike was stolen from an outbuilding at his property, so he made a claim on his policy. AXA declined the claim due to an exclusion clause in the policy. It said, *"any claim made for motorised objects would not be covered under this policy"*.

However, Mr S thought this was unfair as the policy did cover *"garden machinery"*. Mr S explained that his quad bike wasn't road licenced and was used for *"the maintenance of our garden/paddock e.g. enabling rolling, harrowing & mowing"*.

Our investigator decided not to uphold the complaint. She didn't think the quad bike reasonably fell under the category garden machinery, so didn't think AXA had been unfair in declining the claim. Mr S disagreed, so the complaint has been referred to an ombudsman.

My provisional decision

I issued a provisional decision on this on 17 January 2021. I said:

"I'm satisfied that Mr S's quad bike should be considered as garden machinery due to it solely being used in the garden. I'll explain why."

The policy does cover Mr S for the theft of contents at his home, including his outbuildings. However, AXA relied on the terms and conditions of the policy to decline the claim. The exclusion AXA applied used was "Claims arising from the use of motorised objects (e.g. lifts, vehicles, drones, segways etc.) except garden machinery".

The policy terms specifically exclude motorised objects except garden machinery. Mr S asked AXA if had definitions for certain terms in its policy. But AXA doesn't define "motorised objects" or "garden machinery". Mr S said he used the quad bike for "the maintenance of [his] garden/paddock e.g. enabling rolling, harrowing & mowing". Mr S said he had a large garden and only used the quad bike to maintain the garden, so he's always considered it to be garden machinery. Mr S said the use of quad bikes is common in the area he lives for the maintenance of gardens / land.

Mr S said his quad bike wasn't licenced for road use and I've not seen any evidence that the quad bike was used anywhere but the garden. So, I'm persuaded that Mr S did purchase his quad bike for the purpose of maintaining his garden.

I note that quad bikes are offered for sale on mainstream gardening websites. So, while I agree that a quad bike isn't an obvious piece of garden machinery for many people, I don't agree that it doesn't fall into this category at all. I think it's clear that Mr S bought and used their quad bike with the garden in mind.

AXA described the quad bike as being “designed to travel and has a motor within”, which it said means it’s excluded under the contents cover. However, not all motorised objects are excluded under the policy. The terms of the policy state that motorised objects that are categorised as garden machinery are covered by the policy. The term AXA relies on is silent on what garden machinery might be. If AXA had intended to exclude quad bikes, regardless of what they were being used for, I think it would have been reasonable to make this clear in the policy terms.

While I’ve considered AXA’s perspective, I note that it was within its power to define “garden machinery”. It could’ve simply said “garden machinery is any machinery which has no other possible use outside the garden”. So, I don’t think it was fair when AXA declined the claim based on the quad bike not being “garden machinery”. Therefore, I intend to uphold this complaint, I intend to require AXA to re-consider the claim in line with the remaining terms and conditions”.

Responses to my provisional decision

Mr S accepted my findings and didn’t have anything more to add.

AXA hasn’t said whether it accepts my findings. AXA said it couldn’t respond to my provisional decision as Mr S hadn’t told it how much his quad bike was worth when it was carrying out its validation checks on the claim.

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 don’t think AXA needs this information to decide whether to accept my provisional decision or not. My provisional decision simply sets out that AXA couldn’t decline the claim based on a quad bike not being garden machinery. It should now re-consider the claim taking this into account.

AXA need to do this in a fair way. So, if Mr S is unhappy with how this is done, he can raise a new complaint. But as guidance, if Mr S bought his bike in 2004, then its unlikely he would still have records relating back to the purchase. So, AXA may want to speak with Mr S and identify an alternative way of valuing his bike.

However, given neither party has provided any new information, I see no reason to change my provisional decision.

My final decision

My final decision is I uphold this complaint, I require AXA Insurance UK plc to re-consider the claim in line with the remaining and conditions.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 15 March 2022.

Pete Averill
Ombudsman