

The complaint

Mr and Mrs M are unhappy that AXIS Speciality Europe SE (AXIS) declined their claim following a burglary at their holiday home abroad. They had a Home and Holiday Home contents insurance policy. For ease, because Mr M is named on the policy schedule and he dealt with the claim, I'll refer only to him throughout my decision.

What happened

Mr M learned that his holiday apartment, along with several others, had been broken into and items stolen. He claimed under his policy and AXIS appointed a loss adjuster (LA). The LA visited the property and reported that there was no sign of force or violence used to gain entry. AXIS declined the claim.

The suspected burglar was arrested, so Mr M thought AXIS should accept his claim because the arrest was evidence of the insured event. But AXIS maintained its position that there was no evidence the property had been left locked up securely, so Mr M wasn't covered under the policy.

Our investigator didn't think AXIS had treated Mr M fairly. He said there was evidence that other homes had been burgled so he thought it was reasonable to accept that Mr M's home had, too. Our investigator didn't think it was appropriate for AXIS to decline the claim, knowing that there'd been other burglaries in the area on the same night, and that sophisticated entry methods which wouldn't leave any evidence could've been used. Our investigator recommended that AXIS accept Mr M's claim. He also recommended that AXIS compensate Mr M £150 for the claim handling shortfalls identified.

AXIS didn't agree. It raised several concerns about the recommendation, specifically that the policy simply didn't provide cover in Mr M's circumstances.

I issued a provisional decision in January 2022 explaining that I was intending to uphold Mr M's complaint. Here's what I said:

provisional findings

I've thought carefully about the points AXIS made and, while I agree in part, I don't think it's treated Mr M fairly in the specific circumstances. I'll explain.

My role is to decide whether AXIS declined Mr M's claim for the reasons it gave, in line with the terms and conditions of the policy, and fairly. I won't repeat the details: instead I'll summarise what isn't disputed and then focus on the remaining issues and the reason for my provisional decision.

AXIS doesn't dispute the burglary or that Mr M suffered loss of contents. It declined his claim under the following policy exclusion:

"We will not pay for

7 (a) Loss or damage occurring whilst the Home or Holiday Home or any part is vacant, lent or let unless involving forcible and violent entry to or exit from the Home or Holiday home."

Mr M agreed there was no sign of forcible entry.

So, looking at these points alone, I'm satisfied that AXIS declined the claim in line with the policy terms. I've gone on to consider, then, whether it was fair to decline the claim in the overall circumstances.

Mr M said the burglar may have used more sophisticated methods to gain entry to his apartment, such as popping or picking the lock, which wouldn't have caused damage. AXIS believed it was more likely a door or window was left unlocked. The keyholder said they would've locked the doors and windows after the last check.

The evidence doesn't provide any real clarity on how or where the burglar gained entry which might support either view, though I don't think that necessarily matters. That's because, on balance, I'm satisfied the burglar would've gained entry regardless of whether the apartment was fully secured. I've summarised the evidence here:

- The burglar disabled the security gate to gain entry, probably by vehicle, to the two apartment blocks.*
- They disconnected the electricity supplying the apartments, probably to disable the external lighting and prevent detection.*
- Five other apartments directly around Mr M's apartment were burgled on the same night.*
- At least three of those apartments showed signs of forcible entry, and the burglar left breaking-in tools behind at one.*
- TVs were taken from the apartments, supporting the view that a vehicle was used.*
- Mr M's external storage lock-up showed signs of forcible entry.*
- The locks on the wardrobes inside Mr M's apartment had been forced open and damaged.*

All of this tells me that the burglar set out with the appropriate equipment and with the intention of forcing entry to the holiday apartments. So, whether or not Mr M's apartment was fully secured, on balance the burglar would've gained entry. The fact that force was used to gain entry to the grounds of the apartment blocks to begin with, then to Mr M's external storage unit, and again once inside Mr M's property, indicates that the loss was always going to happen.

I've gone on to think about why the policy exclusion is likely to be there. I think it's to minimise the risk of claims where the policyholder hasn't taken care to fully secure their property and an opportunistic theft occurs. Mr M used a keyholder service to provide a monthly check of the property while it lay empty and I'm satisfied that shows he took reasonable care to keep his property secure. I accept Mr M's still responsible for the security of his property, but I can't see what else he could've done in the circumstances. And I think it's more likely than not that his apartment would've been burgled anyway given the lengths the burglar went to to gain entry to the grounds, storage units, wardrobes, and other apartments. For that reason, I don't think the exclusion was fairly applied here and my provisional decision is that AXIS should consider the claim.

I think the LA summed up this claim well on page 4 of the report:

*"In the circumstances we are unable to confirm forcible and violent entry to the property. We suspect the Back Door or Window was not locked **otherwise the thieves would have used sharp instruments on the door or window in the same way they did with the other properties** (emphasis is mine)*

...the property has been ransacked and damage caused internally and the insured has suffered a loss. The police appear to be treating the matter as a genuine theft and in the circumstances, insurers may wish to give the benefit of the doubt and consider the loss”

In addition to the claim outcome, Mr M complained about several customer service issues with the way AXIS handled his claim. For example, it sent correspondence to incorrect or incomplete postal and email addresses, despite Mr M providing the correct details, and he had to chase progress of his claim. Given that the policy provides cover for a holiday home abroad, and travel had been restricted worldwide, I can see why Mr M didn't think AXIS handled his claim as well as it could've done. His ability to provide evidence to support his claim was limited, which he says caused distress to both him and Mrs M. While AXIS isn't responsible for the travel restrictions, it's clear that Mr M was frustrated throughout the claim process because he wasn't able to gather evidence to support his claim. Considering the claim handling shortfalls, I'm satisfied that the proposed compensation of £150 is warranted.

Overall, I'm satisfied that AXIS relied on a valid exclusion to decline Mr M's claim but, under the circumstances, I don't think it [was] fair to do so. And AXIS should compensate Mr M £150 for the avoidable delays and distress he experienced because of the claims handling shortfalls.

I said I was intending to require AXIS Speciality Europe SE to:

- *consider the claim without relying on the forcible and violent entry policy exclusion, and*
- *pay Mr M £150 compensation for the avoidable delays and distress he experienced because of the claim handling shortfalls.*

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

AXIS didn't provide any further comment.

Mr M accepted the key points of my provisional decision, but he asked me to:

- tell AXIS to reverse its decision on keyholder costs;
- tell AXIS to fully reimburse the cost of specified locking mechanisms under the Loss or Theft of Keys cover;
- make clearer to AXIS the serious nature of its claim handling shortfalls, and
- increase the compensation to address the additional shortfalls he experienced with AXIS after bringing the complaint to our service.

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've decided to uphold Mr M's complaint for the same reasons I gave in my provisional decision. However, I'll respond to his additional points now.

Mr M wants AXIS to cover the keyholder costs and locking mechanisms under his claim. My final decision is for AXIS to consider his claim without relying on the forcible and violent entry policy exclusion. To be clear, I'm not telling AXIS to accept or decline his claim – I'm simply saying it wasn't fair that it relied on that exclusion in the overall circumstances so it should consider it again without relying on it.

What this means is Mr M has the opportunity to include anything within his claim which he feels the policy covers and which he can evidence. So, although I'm not going to include the requirements he's asked me to, AXIS should consider anything he provides to support his claim in line with the policy. I hope that's clearer.

Mr M asked me to consider the shortfalls he experienced after AXIS issued its final response. I must allow AXIS the opportunity to respond to any additional concerns he has, so it wouldn't be fair for me to consider issues which it hasn't seen first. If Mr M thinks additional compensation is warranted, he'd need to let AXIS know what he's unhappy with so that it can investigate and, if appropriate, try to put matters right.

Finally, Mr M wanted me to provide greater detail about the shortfalls he experienced when AXIS was handling his claim. He thinks the details should be publicly available and AXIS should learn from them. I don't disagree that AXIS should learn from any customer service shortfalls, but I consider it disproportionate to detail every single shortfall Mr M experienced as they are specific to his individual circumstances. AXIS is aware of the issues, which I've summarised in my provisional decision, and it's now a matter for AXIS to decide what, if anything, it should do to prevent similar issues.

In summary, while I can understand that Mr M wanted greater reassurance about any settlement of his claim, it's for AXIS to reconsider his claim in line with the remaining terms and conditions of the policy.

My final decision

For the reasons I've explained above, and in my provisional decision, my final decision is that I uphold Mr M's complaint and AXIS Speciality Europe SE must:

- consider the claim without relying on the forcible and violent entry policy exclusion, and
- pay Mr M £150 compensation for the avoidable delays and distress he experienced because of the claim handling shortfalls.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 21 March 2022.

Debra Vaughan
Ombudsman