

The complaint

Miss S and Mr S have complained about the service provided and the level of settlement paid by The Baxendale Insurance Company DAC ('Baxendale') under their Transit and Storage Insurance policy.

For the avoidance of doubt, 'Baxendale' also includes its agents and representatives throughout this decision letter.

What happened

Miss S and Mr S engaged a specialist removals and storage company to collect their household goods in 2017 and to put them into storage until they moved to a new home. They bought an insurance policy with Baxendale to cover these events and provided Baxendale with an itemised list of goods over the value of £500. They paid additional insurance premiums to obtain cover of up to £125,000.

When Miss S and Mr S arranged for Baxendale to deliver their household goods to their new home two years later, they found that a number of their household items had been lost or damaged. They therefore made a claim on their insurance policy. Baxendale eventually reached settlement on most of the claimed items and Miss S and Mr S signed Acceptance and Discharge Forms for these items in 2019 and 2020. Miss S and Mr S then said they were unhappy with the settlement figures as they didn't feel they fairly reflected the losses they'd incurred. They were also unhappy that Baxendale hadn't paid compensation for a range of other damaged and lost items and about the way in which their claim had been handled. They wished to receive further compensation and to be reimbursed for solicitor fees they'd incurred as well as acknowledgment of service failings.

Baxendale maintained its position and said that it had made fair and reasonable settlement offers and that it had provided a reasonable service. Miss S and Mr S remained dissatisfied and referred their complaint to this service. Our investigator didn't uphold Miss S and Mr S's complaint. She considered that the settlement offers were reasonable and in line with the terms and conditions of the relevant policy. She didn't consider that it would be fair to ask Baxendale to reimburse Miss S and Mr S's solicitor's fees.

Miss S and Mr S remain unhappy about the outcome of their complaint and the matter has been referred to me to make a final decision in my role as Ombudsman. In July 2022, I issued a provisional decision for this complaint and explained why I was minded to uphold the complaint as follows; -

'Whilst the timescales relating to this case are lengthy and the facts and circumstances are complex, the key issues for decision are relatively self-contained. The key issues are firstly whether Baxendale applied the terms and conditions of Miss S and Mr S's Transit and Storage Insurance policy in a fair and reasonable manner. The second issue is whether Baxendale generally acted fairly and reasonably in the handling of Miss S and Mr S's claim. In both cases, I've concluded that on balance it didn't do so in all respects, and I'll explain why.'

The specific wording of the relevant policy is the starting point in complaints of this nature. The policy naturally provides cover from the time the household goods come into the care and control of the removal company until they're redelivered to the relevant destination address. This is subject to certain limits, conditions and exclusions. The relevant provisions state the following: -

'Time limits for making a claim:

All Claims made under the Policy must be notified In Writing to [the removal company] within the following time limits:

a) Within 7 (seven) days of delivery of the Goods...

Failure to comply with these time limits could prejudice us and may result in the claim being declined by us and all benefit under the Policy will be lost.

An extension to the time limit for reporting claims maybe agreed in writing prior to the commencement of the Services. Whether an extension is granted, the length of the extension, and the terms and conditions of any agreed extension, will be at our discretion. We reserve the right to charge an additional premium in consideration for granting such extension.'

'Basis of Settlement

...Subject to the Terms of this Policy...we, can choose one of the following options to settle your claim:

Pay you a cash settlement for the cost of repairs;

Arrange for repairs;

Pay you a cash settlement to reflect the damage and any loss appearance.

Replace the Goods with an item of similar quality if the Goods are a Total Loss;

Pay you a cash settlement for the Goods subject to the claim so you can replace them with item(s) of a similar quality if the Goods are a Total Loss.

Repair

...Where the Goods can be economically repaired, they will not be considered to be a Total Loss and you cannot claim for a new replacement.

We may, at Our option, pay you a sum to cover the cost of repair.

However, the amount we will pay you will not exceed the amount we would have had to pay our preferred restorer.

Alternatively, at our option, we may arrange to have the item/Goods repaired and we will pay a third party to carry out the repair.

Replacement/Total Loss

If the Goods cannot be economically repaired, the Goods will be considered to be a Total Loss...We may, at our option either:

Pay you cash based on the full replacement cost of an Item of similar quality; or

If the Goods cannot be repaired or an equivalent replacement is not available, pay the nearest cash equivalent or current market value of the Item at the time of the loss or damage.

Where...we offer repair or replacement through a preferred supplier, but it is agreed that you will receive a cash settlement, then the amount we will pay you will not exceed the amount we would have had to pay our preferred supplier.

The basis of any settlement offer under this Policy is always at...our option.

Salvage

If we agree to replace Goods or pay you a cash settlement to purchase replacements, the Goods subject to the Claim, will become our property. The Goods must be released to [the removal company] prior to the delivery of the replacements or prior the payment of any cash

settlement.

If the Goods are not released to [the removal company], the settlement will be reduced to reflect the fact that you have retained possession of the Goods.

Clothing and linen

Claims for household linen and clothing including footwear, will not be subject to replacement as new. The age, quality, degree of use and market value of the items will be taken into consideration when settling the claim.

Matching pairs, sets or suites

If you make a claim for any lost or damaged item, that forms part of a matching pair, set or suite, we will pay you for the cost of repair or replacing the damaged or lost item only. We will not pay for altering, matching or replacing, any item or part(s) which are not lost or damaged and which form part of a set, suite, or other article of the same type, colour or design.

High value items

High value item must be listed on the [the removal company] acceptance form. If an item is not listed it will be assumed for the purpose of dealing with the claim that its value is less than £500.

Our limit

The most we will pay for any claim is the Sum Insured.'

Miss S and Mr S are clear that all their household goods were in good condition before being taken into storage in 2017 by the specialised removal company and that nothing was marked as damaged on the relevant itemised forms. Two years later, they organised delivery of their household possessions to a new home. They said that in the meantime, the possessions had been moved to other depots from the original storage depot without their knowledge.

When their goods arrived Miss S and Mr S said that there had been a 'catastrophic leak' into one of their containers. They said that; 'Everything in that container was either totally ruined, or badly water damaged.' Firstly, Miss S and Mr S said that they were given an unrealistic period to make their claim, in view of the number of containers and possessions and the extent of damage which was involved. Miss S and Mr S said that when they asked for an extension of time, they were told that two weeks was the maximum permitted. They thought that this was insufficient time to go through everything and to make a full claim. They subsequently realised that books with an estimated value of nearly £2,000 had gone missing during the relevant period. They thought it would have been impossible to discover this within a two-week notification period, especially as they were not in the soaked container.

Miss S and Mr S have since produced a list of their total losses. Despite indicating that they were happy with the packing and delivery at the time, they later realised that some of the work had been poor or careless. More recently, Miss S and Mr S have provided further photographic and documentary evidence. They state: - 'Again this is evidence of a lack of care in storage and general handling, which...most likely occurred either when [the removal company] were moving between storage locations or when [it] delivered to our new address.' They thought that it was evident that there had either been misloading or mis-storing of the individually packed boxes.

Miss S and Mr S said that when they made initial contact with Baxendale, its representative, said that Miss S and Mr S weren't insured where damage was caused by mould. They felt Baxendale were only interested in damage limitation in terms of how much it needed to pay out, and that there was 'zero' customer care. They also said that they 'received absolutely no

support when it came to making our claim, particularly around trying to get repair quotes on damaged property'. They said that there were antiques that needed to be dealt with immediately to prevent further degradation and loss of value but that no assistance was offered or given by Baxendale.

They said that they had to make all of the effort themselves to move everything to and from restorers and they thought that this was unacceptable. They felt that what happened was due to the 'gross negligence' of the removal company and they'd been left out of pocket. They said: - 'A removal company shouldn't expect us to get all our damaged goods to restorers, especially considering the amount of damaged goods that needed assessment, and we only have one car. We repeatedly asked for help with this'.

They said that almost all claim items were argued over even though they weren't at fault and even though they'd paid for the extra insurance cover: - 'we had to fight every step of the way to get any kind of customer care, or a service we'd paid for'. They felt they were offered minimal amounts for repair of higher value items, despite providing proof of value and either had to accept Baxendale's offers or surrender goods. Miss S and Mr S said that they'd received no independent customer support and referenced what they considered to be the close corporate connection between the specialist removal company and Baxendale. They said that the removal company had only offered insurance through this one insurer.

Miss S and Mr S wished to stress that a final settlement had not yet been reached and only part of their claim was 'closed out' and for which they'd signed acceptance forms. They said that there were a number of items for which the settlements offered were unacceptable. They thought the logic behind them was 'incomprehensible' and this was 'the reason for this dispute'. They said that they hadn't signed an acceptance form for those additional items and the claim therefore remained open and unresolved. Miss S and Mr S's solicitors' letter of June 2020 referred to five items which hadn't been settled. It said that four others had been settled at an unacceptable level and under duress. Miss S and Mr S added that they now considered they'd been under-compensated, and they also had: - 'the feeling of being bullied into having to accept unsatisfactory offers'.

They were also still waiting for one personal item to be collected as agreed, so that they could be reimbursed for it. Miss S and Mr S also noted that there were many items unclaimed for due to the two-week time-limit for making a claim. As to customer care, they weren't happy and felt that their e-mails were responded to slowly, and that they only received responses on Friday evenings, to the point that it caused 'incredible stress'. More generally, Miss S and Mr S felt that Baxendale had provided an inadequate insurance service.

They referred to the cover for goods in storage being unilaterally raised by £5,000 and they wished to be reimbursed the 'extra amount charged' or would like to be compensated for the 'correct raised amounts'. Miss S and Mr S also referred to their crates being moved from the original storage by the removal company without their knowledge and that during that move, the water ingress to the container would have been obvious.

Miss S and Mr S said that the Guidance Notes / Insurance Booklet which they'd seen didn't mention surrendering goods as salvage. They also asked how antiques could be replaced. They thought that there was no formula behind offers made and that they were offered 25% for more valuable items as opposed to 50% for lesser value items. They said that with certain items, Baxendale had first said that the items were over-insured and then argued that they were under-insured, yet the offer wasn't changed. They thought that focussing on specific items was 'missing the bigger issue.' They thought there had been minimal movement from Baxendale after a year of correspondence.

In summary, Miss S and Mr S said they'd lost a lot and that many of their possessions had been ruined whilst in the care of the removal company which was stressful enough; 'without having to fight for basic compensation'. They also said they'd paid a lot of money over two years to insure their goods correctly, yet they felt they'd been treated as if it was all their fault and they'd had to justify their claim. They emphasised how frustrating the process had been.

In Baxendale's response to the complaint, it noted that Miss S and Mr S rated the quality of move in 2017 and 2019 as 'very good' and in 2017 stated; 'Excellent service, very friendly. Highly recommended.' In 2019 however, the water damage to furniture and pictures on the relevant form was noted. Baxendale said that at the outset, Miss S and Mr S signed standard acceptance forms, which included a 'demands and needs' statement, confirming that the customer had received and read the insurance guide and that the cover met their needs. It said that following their report of damage, Miss S and Mr S provided a list of 33 items for which they wished to make a claim.

Baxendale accepted that it had made certain service errors. Firstly, it accepted that whilst mould and mildew is excluded under the terms of the policy, it would normally make enquires into the cause of this before a judgement was made on whether loss was covered. It apologised that this didn't happen. It considered that its communication flows had been satisfactory however and described its e-mail exchanges in detail. It noted the fact that during these exchanges, interim payments of £1,904.30, £685 and £5,405 had been agreed for certain items. It considered that it had adequately explained the basis of offers, especially as to the items which remained outstanding.

It said that the policy explained the settlement options and: 'went into considerable detail as to the information that is required and how the claim will be dealt with.' It explained that items were only recovered for salvage if there was some residual value in them, for example, an electrical item could not be used again and would not be salvageable. It said that the full value of other items was offered as appropriate, on the understanding that they were required for salvage. However, it said that an alternative offer was made to recognise Miss S and Mr S's wish to retain the items. It considered that this was entirely consistent with the terms of the policy and insurance practice. In the case of antiques, Baxendale said that if the repair costs exceeded the value of the antique, it would be deemed to be a total loss. It said that the fact that an item was an antique didn't always mean that it had significant value and that there were many factors to consider such as condition, rarity, origin, age or demand.

Baxendale disagreed that Miss S and Mr S accepted interim payments under duress. It said that payments for 30 of the 33 items claimed had been made and that by signing 'discharge forms', Miss S and Mr S accepted settlement on a full and final basis, so that Baxendale were discharged from any further liability. As to certain items which had been declared by Miss S and Mr S to be 'high value', this included two items insured for £1,200 in total. Although they'd obtained an estimate for repair which was higher than this value, it said that its maximum liability was £1,200 and that this would be paid on the understanding that the items were taken for salvage. As Miss S and Mr S wished to retain the items, Baxendale offered an alternative cash settlement of £300 which was subsequently increased to £600 representing 50% of the declared value; 'in recognition of your dissatisfaction with the offer...'.

Baxendale noted that further disputed items hadn't been listed by Miss S and Mr S as a high value items and: - 'therefore it is assumed that its value does not exceed £500.' The estimated cost of repair was significantly higher than this figure. As Miss S and Mr S wished to retain the items, Baxendale offered £500 and subsequently increased this offer to £700 in total: 'in an attempt to resolve this matter'.

With regard to one personal item, Baxendale stated that settlement had been agreed in the

sum of £400, on the understanding that it was taken for salvage. It said that it hadn't collected it, as it understood that Miss S and Mr S hadn't signed the discharge form. Once it received the completed discharge form, it said that arrangements would be made to collect it at a mutually convenient time and payment would then be made. As to Miss S and Mr S's complaint of inconsistent treatment of items, Baxendale stated that it took a number of factors into account when dealing with a claim for a particular item so the approach for one item may not be appropriate for another. For example, for certain clothing items, it had concluded that whilst some may be beyond use, others could still be used.

Having considered all the relevant information and evidence in this matter, it's clear that Miss S and Mr S are extremely unhappy about the way in which the removal company, the loss adjusters and also Baxendale as insurers handled this matter. Miss S and Mr S appreciated that it was only the insurance aspect of their complaint which could be directed through this service and that in itself was a source of frustration. I agree with Miss S and Mr S that a complaint or proceedings against the specialist removal company, for what they term as 'gross negligence' or claims in relation to uninsured losses would be a matter outside the service's jurisdiction and therefore a matter for another forum.

I appreciate that Miss S and Mr S have been through a lengthy and upsetting series of events as a result of their damage and loss. Damage occurred to household and personal possessions, antiques and items of sentimental value and this will have been distressing. I also note that they'd paid a considerable amount of money over two years to insure their goods for the type of eventuality which occurred. However, it's unfortunately an inevitable part of an involved insurance claim of this nature, that discussions, justification and evidence for claims need to be provided for individual items before an insurance company can indemnify policy holders for evidenced loss. I understand that such a process can take time and cause additional frustration for policy holders.

I've dealt with each of the points of complaint raised by Miss S and Mr S and their solicitor under separate headings as follows: -

Period for making claim

The policy requires lost or damaged items to be reported within 7 days and I appreciate that Miss S and Mr S found it difficult to report all damaged items within this time-scale where the overall number of items was considerable. I can understand that they needed additional time. Baxendale increased this period to 14 days, and I've seen no evidence that Miss S and Mr S asked for a further extension of time following this. I've noted from Miss S and Mr S's correspondence with Baxendale in 2019 that they say; 'we'd like a bit more time than just 7 days please in order to go through our things properly as there is quite a bit of mould and rust on a number of items'... seven days may not appear to be an unreasonable extension in the light of the request for a 'bit' more time. However, this has to be viewed in the context of Miss S and Mr S's understanding that two weeks would be the maximum permitted and I've no reason to doubt that this was their understanding and that they would therefore have produced their list of claimed items with some haste.

Miss S and Mr S's claim included 33 items and refers to specific 'damp damaged' pictures which were to be forwarded to a named firm of restorers for a restoration quote. They have accepted sums in full and final settlement for most of these items and I don't consider that it would be fair and reasonable for Baxendale to re-open these claims.

Miss S and Mr S however now claim for damage caused to a number of other paintings and drawings. On a provisional basis, I can understand that it may only have been when they'd received invoices for restoration from another firm in November 2019 that Miss S and Mr S will have realised the true extent of the damage and loss. This is specifically the case for

paintings and drawings where the extent of water damage may not have been apparent at the outset. In the circumstance, I consider that Miss S and Mr S were unfairly disadvantaged by the relatively short timescale for these items. I also appreciate that from Baxendale's perspective, that by the time restoration to additional paintings and drawings took place, they hadn't seen quotes or been able to assess the damage. It would then have been difficult to pin-point the cause of all damage. There is no evidence that estimates or that a full report on damage had been provided by the restorers prior to carrying out the restoration work.

The terms and conditions of the relevant policy are clear that a claim could be declined if the time-limit for making a claim was not adhered to. It's a standard insurance provision so that evidence of damage and loss can be ascertained at the earliest opportunity. With this specific claim, involving specialist items, and specifically paintings and drawings however, I can't say that two weeks was a sufficient or realistic period to enable Miss S and Mr S to make a fully informed claim. I also note the photographic evidence which clearly shows that, during the period of specialist removal and storage, there had been water ingress and damage within the crate in which the paintings and drawings had been stored. On the balance of probabilities, and on a provisional basis, I consider that it's likely that at least some of the damage to other paintings and drawings was caused by this water ingress. The proportion of damage due to the existing age and condition of the items and the proportion of damage due to water ingress would however need to be established through obtaining a formal report from the restorers.

Miss S and Mr S have also stated that a large number of books with an estimated value of nearly £2,000 went missing whilst in the care of the removal company. Baxendale haven't offered a response in this respect other than to note the time-limit for claims which is included in the policy. With regard to missing books, Miss S and Mr S have now itemised these and provided photographic evidence of the items prior to the move. They state that as the books hadn't been stored in the crate which had suffered water ingress and water damage, they hadn't immediately realised that they were missing.

Again, on a provisional basis and on the balance of probabilities, I consider that it's likely that the books did go missing whilst in the care of the removals company and that it would be unfair and unreasonable for Baxendale to rely on a technical breach of the terms and conditions in this respect to decline to consider the claim. I've already indicated that I accept that Miss S and Mr S initially thought that they were unable to claim for any individual items which weren't claimed for within two weeks of delivery of their goods. In the case of the books however, it wouldn't have caused prejudice to Baxendale's ability to investigate the claim whether Miss S and Mr S discovered the loss within the two week time-limit or some time afterwards.

In summary, it's my provisional conclusion that Miss S and Mr S were led to believe that the terms and conditions of the policy were immovable once one short extension had been provided. In the circumstances, it wasn't unreasonable that they would have thought that they then had to abandon the remainder of their claim. In the circumstances, whilst I appreciate that Baxendale has relied upon a clear term of the policy, and whilst there is no evidence that Miss S and Mr S subsequently sought a further extension, I don't consider that they were treated fairly and reasonably in all respects. It's likely that the true extent of Miss S and Mr S's insured loss due to an insured event, specifically regarding paintings, drawings and books, was unfairly and unreasonably declined by Baxendale.

Service issues

Miss S and Mr S felt that they'd received poor customer care from Baxendale. I note Baxendale's apology for certain service errors. In particular it acknowledged and apologised that its representative had indicated that their claim would be declined before making the

necessary and standard enquiries. I note that Miss S and Mr S had been looking for Baxendale to acknowledge its failings. I agree that it was necessary for Baxendale to apologise for this failing. I note that Baxendale did engage with the claim shortly after this flawed initial response and so didn't significantly prejudice Miss S and Mr S's claim.

As to the speed of response, I've noted the volume of e-mail communication between the parties and note the significant number of items being claimed for and discussed, however I've not seen evidence of serious response failures prior to deadlock in relation to the settlement negotiations. In the circumstances I can't say that the manner or speed of communication by Baxendale was unfair or unreasonable.

As to unilateral increase of the insurance cover by Baxendale, I note that in October 2017, the removal company indicated that storage rental (and premiums) would increase and that the level of cover would increase to £130,000 in total. By January 2018 however, it referred to the level of cover being £125,000 as before, albeit that additional insurance premiums were being charged. On balance, I consider that Baxendale had indeed raised the level of cover to £130,000. It's unfortunate that this communication lacked clarity. I note however that its October 2017 letter provided an opportunity for Miss S and Mr S to confirm revised values in writing, and it doesn't appear that there was any further communication to increase cover for any specific high value items. Unfortunately, if the increased premiums were paid without further query at the relevant time, this isn't a matter for which I can now direct reimbursement and it's not possible to ascribe a specific increased insurance value to any particular claim item, and so I'm not minded to uphold this aspect of the complaint.

I agree with Miss S and Mr S that they would have received a better customer service had Baxendale kept Miss S and Mr S informed of the fact that their household goods had been moved to other depots by the removal company. Nevertheless, this is a matter which concerns the removal company and doesn't merit the payment of an additional compensatory award by the insurers under the policy.

Finally, as to Baxendale's reliance upon its time-limit for making a claim, as stated above, this was a clear provision in the policy and a limited extension was provided. I'm satisfied however that Miss S and Mr S were informed that two weeks would be the maximum extension which would be allowed. In the light of the number and nature of specialist items insured, on a provisional basis I consider that Baxendale could have provided a better service and assistance, to acknowledge the need for time and support in obtaining specialist reports into damage to paintings and drawings in the affected crate. In this respect, I consider that a modest amount of additional compensation of £300 should be paid by Baxendale to reflect this service failure and the additional stress and inconvenience this would have caused in an already stressful situation.

Basis of settlement for outstanding claimed items

Settlement is yet to be reached upon a limited number of items. In its final response letter, Baxendale provided an explanation for the basis of settlement for the remaining items. Unfortunately for Miss S and Mr S, we wouldn't consider it unreasonable for an insurance company to deem an item to be a total loss if repair costs for a particular item exceeded its insured value as is the case for some of the remaining items.

Miss S and Mr S recognised that the policy terms and conditions allow for the approach taken by Baxendale. They nevertheless feel aggrieved that they have been subjected to loss and damage caused to items in the care of a specialist company and yet this isn't being covered under their insurance policy. However, the fundamental starting point has to be whether the insurer has applied the provisions of its insurance policy in an acceptable manner in accordance with standard industry practice. In this case, I can't say that it was

inappropriate for Baxendale to have applied its policy terms to treat items as being beyond economic repair. It's the case that in such policies, the insurer has discretion as to the method of settlement as long as it exercises this discretion in a reasonable manner. If repairs to an item insured for £600 would cost £750, an insurer wouldn't be expected to pay £750 and would reasonably seek to recoup its losses through salvage of the damaged item.

It's appreciated that this causes difficulty where items have a value other than purely financial value. In such cases, where the policyholder doesn't wish to relinquish the item, then the settlement sum would inevitably be lower than the insured value or the repair cost. In summary, I note that Baxendale offered to pay the full insured value of certain items specified by Miss S and Mr S when they took out their policy with Baxendale. The policy made it clear that this would be paid if items were surrendered to the insurers for salvage. Miss S and Mr S didn't wish to surrender these items and Baxendale wasn't obliged to pay this full value as the cost of repair exceeded the declared value. I have also considered each of the items for which settlement is yet to be reached and consider that the declared values for high value items is the maximum which will be paid out under the policy.

Miss S and Mr S also point to a list of items other than pictures where they estimate they say they'd been unable to identify damage in time to make a valid claim. They referenced items of furniture, clothes, silver and sundry items for which they considered the true loss to be just under £4,000. Provisionally I don't consider that Baxendale acted unfairly or unreasonably in declining to cover these additional items. I consider that any water damage would have been visible from the outset and that it would have been reasonable to have claimed for these particular items within the two-week time-limit provided by Baxendale. The policy provisions regarding the limitations under the policy for matching suites and clothing are also clear. In conclusion, I can't say that Baxendale's application of the policy provisions or that the offers for items which remain to be settled are unfair or unreasonable.

The deadlock in relation to one personal item is noted, however Baxendale has made it clear that the item will be collected and £400 will be released on signature and return by Miss S and Mr S of a discharge form and there is an assumption that this will therefore proceed without further input from this service.

Finally, I appreciate that Miss S and Mr S will be disappointed as two years elapsed between the items being taken into storage and the date of the claim, and they expected the value to have increased. The value of antiques can decrease as well as increase however, and the declared value is what the policy document commits the insurer to pay. I'm also satisfied that Baxendale was acting within the policy terms in offering settlements that reflected the age of items of clothing and that it was fair that they hadn't replaced these items with new ones.

Additional matters

On the balance of probabilities and on the available evidence, I can't say that any Acceptance and Discharge forms have been signed under duress or pressure and Miss S and Mr S have clearly felt able to challenge settlement offers for other items in the strongest terms. I also note that they consider that Baxendale should make a contribution towards their solicitors' costs. Again, it's unfortunate that Miss S and Mr S have expended additional significant sums in seeking legal advice and they ultimately ceased their instructions due to these mounting costs. However, on a provisional basis, I don't consider that it would be reasonable to require Baxendale to cover these costs as this provisional uphold decision would have been issued whether or not such input had been sought.

Conclusion

I can appreciate that Miss S and Mr S are disappointed and frustrated that they've not

received the settlement figures they were hoping for following the very unfortunate damage to some of their possessions whilst in the care of a specialist removal and storage company. I can also appreciate the need for insurance companies to fully scrutinise significant claims of this nature. Having carefully considered the terms and conditions of the insurance policy however, on a provisional basis, I can't say that Baxendale have applied these in a fair and reasonable manner in all respects. My provisional uphold decision therefore requires Baxendale to re-consider specific items of claim which have been 'timed-out', namely, paintings, drawings and books, in the light of the remaining provisions of the policy.

As to the quality of service provided by Baxendale, I can appreciate why Miss S and Mr S rated the service as being very good in the relevant feedback form on delivery, before realising the extent of the issues which emerged. I've therefore discounted this rating by Miss S and Mr S. Nevertheless, having identified certain service issues above, I can't say that the majority of these should lead to additional compensation. I've outlined above that as to the time-limits imposed in relation to the paintings and drawings, Baxendale should have provided a better service and support and I provisionally require payment of modest compensation of £300 in this respect to reflect this service failure and the additional stress and inconvenience this would have caused in an already stressful situation.

In conclusion, I appreciate the stress and anxiety caused by the incident itself and the ongoing correspondence. I also appreciate that damage and loss had occurred to a number of Miss S and Mr S's possessions through no fault of their own whilst in the care of a professional removal and storage company. What I must focus upon however are the specific terms and conditions of the policy to cover for such eventualities and whether those terms have been applied in a fair and reasonable manner. I've provisionally set out the ways in which I consider that Baxendale has acted in an unfair or unreasonable manner in applying the terms. In the circumstances, I provisionally uphold Miss S and Mr S's complaint in the respects which have been detailed above.'

In my provisional decision, I asked both the policy holders and Baxendale if they had any further comments or evidence which 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.

Miss S and Mr S's made an additional comment following receipt of the provisional decision as follows; *'We just need to stress that the 2 week time limit to assess our property was given as a hard stop at the time. That was the maximum offered and it was made very clear that no more time would be given.'*

Baxendale disagreed with the provisional decision. In summary, it considered that the policy terms and conditions were at all times applied correctly and fairly and that there were no grounds for the complaint to be *'adjudged to the contrary.'* Baxendale considered there was a distinction between the claim for uninsured losses made by Miss S and Mr S's solicitors to the removals company and the separate insurance claim. It was concerned that Miss S and Mr S may have conflated the issues.

The detailed submissions made by Baxendale in response to the provisional decision were as follows. Firstly, Baxendale said it was unaware that Miss S and Mr S had lost a box of books, or that there were damaged paintings/drawings in addition to the ones reported in March 2019. It said; *'The first notification was when we received the PD'*. In summary, it said that the claim for missing books and damaged pictures/drawings was never reported to

Baxendale and did not form part of the insurance claim. It also stated that the claim for missing books and additional pictures/drawings was not made until June 2020, a year after the delivery of the goods, when they were included as part of a claim for uninsured losses against the removals company.

Baxendale was adamant that Miss S and Mr S had accepted the time limits for making a claim: *'Having taken up the offer of insurance and having had sight of the policy wording, they were on notice that the policy contained a time limit for reporting items lost or damaged.'* It stated that when Miss S and Mr S signed the removal company's acceptance forms, they confirmed that they'd read the policy terms and conditions and that it met their demands and needs. It also stated that no concerns or objections were raised regarding the time limit for reporting claims when they accepted the offer of cover.

It also maintained that under the policy wording issued in 2019, Miss S and Mr S had the option to request a longer time limit if they felt that seven days would not be long enough. It stated that no request was made, and no extension was agreed prior to redelivery. Following the redelivery, it stated that, although there was no obligation to do so and *'recognising that Mr and Mrs S needed more time'*, they were granted an additional seven days. It said that there is no record of the policy holders stating that the extension was not long enough or requesting a longer time limit. It said that any concerns regarding the extension were not shared at the relevant time and, *'was not questioned until June 2020 when the matter was raised by their solicitors.'*

Baxendale described the context and stated that the relevant containers were not full and that there were 17 boxes of books. It said: *'It would, in our view, have been possible for missing boxes to be identified within 14 days by simple reconciliation counting the number of boxes delivered against the number listed on the inventory. No missing items were reported to the removal company on redelivery, or in the days/weeks following'*, and then described one other missing item which had been claimed for and duly settled. Baxendale disputed that it had declined the claim for missing books on the grounds of late notification as it said that *'no claim has ever been submitted to...Baxendale'*.

It stated that it had only ever been aware of the 33 items listed by Miss S and Mr S on their claims list submitted in May 2019. It said that it therefore didn't understand how it had been judged to have acted unfairly and unreasonably: *'in relation to items which were not included in the insurance claim and of which we were unaware.'* It said that it likewise didn't decline the claim for pictures/drawings on the grounds of late notification.

Baxendale disagreed that its position wouldn't have been prejudiced as a result of the late notification of the missing books. It said: - *'The reporting of lost items is especially important as early notification can assist in the location of the missing items. Early notification makes it easier in gathering information from staff involved on the move which can assist in locating the items, searching vehicles, checking other consignments, alerting staff to look out for unidentified items on store or on vehicles and re-tracing operational stages'*.

Baxendale noted that a claim for additional pictures/drawings was included *'as part of the claim against the removals company'* by Miss S and Mr S's solicitors in their letter of claim. It referred to a passage in that letter which confirmed that whilst solicitors considered the 14 days *"insufficient"*, Mr and Mrs S's claims had not been *"repudiated"* because of it. In summary it stated that the letter of claim from the solicitors made no allegations relating to part of their claim being declined by Baxendale on the grounds of late notification.

As to legal costs, the decision concluded on a provisional basis, that it would not be reasonable for Baxendale to be required to cover these costs. Baxendale responded that it appreciated this conclusion, however it also wished to make it clear that Baxendale had no

contact whatsoever from solicitors acting on behalf of Miss S and Mr S. It stated that the legal costs incurred related solely to the claim against the removals company for uninsured losses.

Finally, the provisional uphold decision requires Baxendale *‘to re-consider specific items of claim which have been timed-out, namely, paintings, drawings and books, in the light of the remaining provisions of the policy.’* Baxendale stated that none of the claims submitted by Miss S and Mr S were ‘timed out’ and that it hadn’t turned any part of the claim down on the grounds of late notification. It repeated that, apart from the 33 items listed in the original claim list, Miss S and Mr S didn’t submit a claim to Baxendale for paintings and drawings or books.

I’ve considered each of Baxendale’s points in turn, which I’ve dealt with under three broad headings as follows: -

Whether Baxendale was aware of outstanding insurance claims, and whether it should now consider such claims?

On the balance of probabilities, I conclude that Baxendale was aware of the specific details of the outstanding claimed items, the nature of the damage or loss and the amounts claimed by June 2020. It said that it was unaware of the loss and damage to outstanding items and that the first notification was when it received the provisional decision. This is not however the case as explained in this final decision.

Baxendale also stated that the loss of books had not been reported to itself. It is the case that this loss wasn’t reported within 14 days of delivery. I’m satisfied however that the loss was clearly identified a year later, and that Miss S and Mr S wished to claim for it, whether from the removal company direct or from Baxendale. The reasons for this conclusion are provided below.

As Baxendale was placed on notice in June 2020 that this loss occurred, it should now properly consider the claim in accordance with the remaining provisions of Miss S and Mr S’s policy. I appreciate that I’m requiring Baxendale to consider these items some three years following the date of loss. The provisional decision however notes the fact that this has been a protracted complaint and the facts and circumstances are complex. The dispute between the various parties in relation to the damage and loss has also involved solicitors. Invariably this has all caused delay.

I’ve noted that there were a large number of items identified as lost or damaged and now claimed outside the 14-day extended time-limit. It’s not the case however that Baxendale was unaware of this fact. Baxendale was put on notice that there were further claims being pursued in the policy holders’ correspondence, including the following: -

In August 2019, Baxendale was placed on notice that Miss S and Mr S were unhappy with various aspects of their claim and that they felt they had no choice but to engage a solicitor’s services. Again, in October 2019, they stated that they were instructing solicitors.

Although Miss S and Mr S’s solicitor’s letters in 2020 and 2021 were directed to the removals company, it made it clear that they were pursuing the insurance claim as well as any claim against the removals company. They considered the two to be integrally linked: - *‘Two weeks was not enough to go thorough one container of damaged goods which is why a number of items were missed and initially not claimed for’.*

Likewise, the removals company appeared to recognise its link to Baxendale and that the claims were integrally linked. In its letter in June 2020, it referred to the guidance notes for

insurance and enclosed the correct guide; -*'The content of this guide may explain the approach of [Baxendale] and why the amounts they have offered for the outstanding items.'* Also; -*'It maybe the case that your clients are unhappy with the terms of settlement put forward by [Baxendale] but your clients were provided with a copy of the insurance at quotation stage and, by completing the acceptance, confirmed that the cover met their "demands and needs". From what I have seen from your documentation, the offers made by [Baxendale] are consistent with the policy wording.'*

In September 2021, Miss S and Mr S's solicitors were advised by the removals company to write directly to Baxendale about any complaint regarding the insurance aspects. *'If your clients have concerns that their insurance claim has not been dealt with correctly or that they have not been treated fairly then you have written to the wrong company...you are at liberty....to write to...Baxendale'.*

In any event, it would be fair and reasonable to expect a specialist removal and storage company to liaise with relevant insurers in the event of the receipt of correspondence from solicitors, making it clear that there were further losses being pursued, whether against the company or insurers. On the balance of probabilities, I consider that Baxendale were aware of this correspondence and knew of Miss S and Mr S's on-going dissatisfaction, including dissatisfaction regarding outstanding items and claims.

Miss S and Mr S did, as advised by the removals company, write to Baxendale in October 2021 and said that, due to the fact that the time limit *'was sadly only extended for a further 7 days.... Considering the fact we had 4 containers worth of goods to go through, one of which had been completely flooded, we were never going to be able to make a complete claim for all our damaged / missing goods as we simply didn't have enough time. Our loss was substantial from this move, as can be seen from the list attached'.*

They also wrote: - *'The goods don't, of course, include all the unclaimed-for items we lost due to the 14 day limitation to make our claim, noted on the list sent to you'.* Miss S and Mr S enclosed the detailed list of these *'total losses'*. I'm therefore satisfied that they made it clear that they had specific, outstanding claims which they'd communicated to Baxendale.

In Baxendale's response in October 2021, it stated it would look into full details of all correspondence surrounding the assessment of Miss S and Mr S's claim. *'On receipt of this information I will review all aspects and revert to you in due course with my comments.'* Baxendale's final response letter in November 2021 didn't however address the complete *'list attached'* and the ongoing complaint regarding additional damaged paintings and drawings and lost books. It simply referred to; *'Your total claim as submitted consisted of 33 items'* and then referred to outstanding items from the list of 33. It added; *'I believe I have provided you with a full and comprehensive response to the points which you have raised but if you remain dissatisfied with my response then you can escalate this matter to the Financial Ombudsman Service for an independent review of the issues'.*

Miss S and Mr S's response was to thank Baxendale for addressing *'some of the open points'* in their claim and to advise that they'd taken the matter up with our service. In the complaint to this service, Miss S and Mr S also stated; -*'We were given only 7 days to make our claim, which my husband managed to have extended to 2 weeks. This was a totally unrealistic amount of time considering the fact that we had 4 containers worth of goods / boxes to go through, and the amount of destroyed / damaged goods from the 1 soaked container. Consequently we weren't able to make a full claim for everything we had lost as we simply didn't have the time. List of total loss is available as in our solicitor's letter.'*

They also made it clear that they wanted Baxendale to put things right and wished it to; -*'Pay due compensation for the damage to our goods, and for the lost goods we were not given the time to claim for.'* Baxendale also received a copy of this complaint in November 2021. In summary it's noted that Baxendale didn't explicitly decline Miss S and Mr S's claim in relation to the outstanding items. Nevertheless, Miss S and Mr S raised a complaint, first with the removals company, and then with Baxendale about the outstanding claim items. Baxendale didn't address or respond to the complaint about these items and therefore implicitly dismissed Miss S and Mr S's claim and complaint.

Whether the policy time-limit for making a claim was reasonable in the circumstances?

I'm satisfied that Miss S and Mr S accepted the terms and conditions of the policy, to include the time-limit provisions. On the balance of probabilities, I also consider that they hadn't complained that the extension was not sufficiently long until June 2020, after they'd instructed solicitors to act.

In the absence of relevant telephone records however, I accept that Miss S and Mr S had been led to believe that an additional seven days was the maximum extension that would be permitted. They understood this to be a *'hard stop'* and only challenged the reasonableness of the permitted timescales following solicitor intervention.

None of the above however alters the key issue as follows. This seven-day time limit policy provision may be entirely reasonable in a straightforward case. The provisional decision explains however that this is a non-standard case. It involved water ingress to a crate during the period of specialist storage, and the crate contained numerous specialist antique items.

Whereas an expert may have been able to rapidly identify water damage to an antique drawing or painting, it would not be fair or reasonable to expect an ordinary consumer to be able to do so. The evidence indicates that water damage had occurred to the paintings and drawings which are the subject of the outstanding claim. The repair invoice refers to *'humidification'* in some instances, which may be indicative of water damage and this needs to be properly considered by Baxendale. I'm therefore satisfied that, on the balance of probabilities, water damage could only reasonably have become identifiable following expert examination. A time-limit of 14 days in order to make an, as yet, unidentifiable claim in May 2019 would not be fair and reasonable in the circumstances.

In addition, certain service failings were identified in the provisional decision. I'm satisfied that Miss S and Mr S didn't receive adequate support from Baxendale at the outset. Such reasonable support and assistance would involve assistance and advice to arrange for the full extent of water damage to specialist items to be urgently investigated. I also note that Baxendale's representative wrongly asserted at the outset that damaged items due to mould were not covered under the policy. It's understandable in the circumstances that Miss S and Mr S were unclear about what they could and could not claim for in the circumstances.

The provisional decision also makes it clear that it was understandable why the loss of books wasn't discovered immediately as they were not in the soaked container. It's not therefore unreasonable that Miss S and Mr S devoted their attention to the container where there was obvious damage to numerous items and didn't immediately follow up this loss. The delay in notification is also not unreasonable in view of their initial understanding about a *'hard stop'* deadline to make a claim for specific items.

In summary, I'm satisfied that Miss S and Mr S would have claimed for these items much earlier but for their reasonable initial understanding that a further extension to the time-limit was non-negotiable.

Further general points

As to Baxendale's submission that its position was prejudiced as a result of the late notification of the missing books, this point is well made. It's accepted that late notification of a claim can create such practical and logistical problems and would have prejudiced early investigations. It would clearly have been preferable if this loss had been discovered within 14 days. This does not alter my overall conclusion however, that it wasn't unreasonable that the policy holders' time and attention was diverted to the numerous goods which were evidently water damaged. Also, it was not unreasonable to have initially taken the view that outstanding items could not be claimed, until solicitors may have advised otherwise. In balancing the accepted prejudice to both Baxendale and Miss S and Mr S, I conclude that greater prejudice was caused to the policyholders. It would therefore be fair and reasonable for Baxendale to now consider the outstanding items.

As to the distinction Baxendale's makes between the claim for uninsured losses made by Miss S and Mr S's solicitors to the removals company and the separate insurance claim, I consider this to be an artificial distinction. Baxendale stated that Miss S and Mr S were conflating separate matters. However as stated above, I consider that Baxendale was aware that Miss S and Mr S had communicated the fact that they'd suffered total losses which had not yet been recovered under the insurance claim.

It was clear that Miss S and Mr S were pursuing their outstanding losses from either the removals company or their insurers. The reason for writing a complaint to Baxendale in such terms was the perception that they'd been 'timed-out' of an insurance claim. I find that it would be unreasonable to apply the 14-day in this fact-sensitive case and that Baxendale should therefore now consider the claim for outstanding items under the policy. To be clear, Baxendale will therefore be required to consider specific items of claim which may otherwise have been timed-out, namely, paintings, drawings and books, in the light of the remaining provisions of the policy.

As to legal costs, it's recognised that the solicitor's letters were addressed to the removals company rather than to Baxendale. Nevertheless, Miss S and Mr S clearly felt they needed support from expert restorers and a firm of solicitors. Whilst I have rejected the claim for solicitors costs, I can understand why Miss S and Mr S felt they needed to turn to specialist advice and support in the light of their outstanding issues following the damage and loss which occurred. In turn, the solicitors had highlighted a view that two weeks was not enough to go thorough one container of damaged goods so that a number of items were missed and *'initially not claimed for'*.

Finally, Baxendale pointed out an error in the provisional decision, which indicated that it had arranged delivery of the goods. This point is agreed and noted. Delivery was arranged by the specialist removals and storage company.

Conclusion

I consider that Miss S and Mr S would have made their claim within the 14-day time limit had they been able to identify such loss within this time scale and had they not been given to believe that this was a *'hard stop'* deadline. Following receipt of legal support, they subsequently made it clear that it wished to claim for these items from Baxendale. It didn't address the claim, although it's accepted that it didn't explicitly decline it. Baxendale had the opportunity to respond in its final response letter but didn't address the outstanding items raised by Miss S and Mr S in their list of total loss. Baxendale should now consider those claims notwithstanding its usual time limit provision.

In conclusion, subject to the points noted and agreed as above, I remain satisfied that Baxendale has not acted fairly and reasonably in response to Miss S and Mr S's complaint regarding their outstanding damaged paintings/drawings and lost books. In all the circumstances, I've concluded that the provisional decision provides a fair and reasonable outcome to the matter.

My final decision

For the reasons given above, I uphold Miss S and Mr S's complaint in the following respects and provisionally require The Baxendale Insurance Company DAC to do the following: -

- to consider Miss S and Mr S's claim for those damaged paintings and drawings not already settled, in accordance with the remaining terms and conditions of the policy and following receipt of a report from their restorers as to the nature and likely cause of damage.
- to consider Miss S and Mr S's claim for the loss of their books in accordance with the remaining terms and conditions of the policy.
- to pay compensation in the sum of £300 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S and Mr S to accept or reject my decision before 23 September 2022.

Claire Jones
Ombudsman