

The complaint

Mr S complains that AXA Insurance UK Plc declined his claim on his contents insurance policy after items of shopping were stolen from his car.

What happened

Mr S had a contents insurance policy that was underwritten by AXA. It included cover for personal belongings while he was away from home.

In October 2022 he had some shopping worth over £1,000 stolen from his car while it was parked at his partner's house. He made a claim on his policy but AXA declined it. AXA said the section of cover had an exclusion if there was no evidence of a forced and violent entry when the theft took place. And it said as there was no evidence of this, then the claim wouldn't be covered.

Mr S didn't think this was fair. He said there had been other thefts from cars on the road that night. And he said AXA had admitted that the theft could have been carried out by the thieves overcoming the electronic keyless entry to the vehicle to gain entry, but hadn't considered this when declining his claim. He made a complaint which wasn't upheld, although AXA offered £25 compensation for the delay in responding to the complaint.

Unhappy with this, Mr S brought his complaint to this service.

Our investigator recommended the complaint be upheld. She said that she didn't think AXA had done enough to show that the exclusion applied so thought it should carry out a more thorough investigation to determine whether it fairly would. And she thought that due to the delay it had caused it should pay Mr S £100 compensation.

Mr S accepted our investigator's outcome, however AXA didn't. It said there was no evidence there had been forcible and violent entry so the claim couldn't progress. It asked for the complaint to be reviewed by an ombudsman.

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.

When an insurance claim is made it's for the insured to show that there's an insured peril – that's something that's covered under the policy. It's then for the insurer to either accept the claim or prove that an exclusion would apply.

Here, AXA has relied on the following exclusion in the relevant policy cover section:

'What they are not covered for...

Loss or damage caused by theft or attempted theft from unattended motor vehicles unless in a locked covered boot or glove compartment and there's evidence that forcible and violent entry took place.'

It's said that as there was no evidence of forcible and violent entry then the policy wouldn't respond.

I've considered this but I don't think AXA's done enough to prove the exclusion applies here. Mr S has confirmed that the shopping was stolen from the concealed boot of his car. And from what I've seen, AXA hasn't carried out any investigation into how entry was gained to the boot. When it's applying an exclusion it is AXA's responsibility to prove that it applies. Without further investigation, AXA is unable to know whether there is evidence of forcible and violent entry and therefore unable to fairly and reasonably apply the exclusion.

This service generally considers that the use of force doesn't have to lead to damage to the vehicle. So the lack of immediately obvious evidence, isn't enough to say force was not applied.

Further, when considering whether the action was violent, we'd consider whether the level of force used was over and above what would usually be necessary to gain entry to the vehicle. So should the theft have happened by electronic means, we may think this was enough to prove a forcible and violent entry. But AXA hasn't shown that it has considered this.

As AXA has carried out no investigation into how access was gained to the vehicle, I don't agree it's done enough to prove the exclusion would apply. For this reason I agree with our investigator that AXA should re-consider the claim, in order to determine whether there is evidence that there was a forcible and violent entry. And therefore whether the exclusion would fairly and reasonably apply. It should also assess the claim in line with the remaining policy terms and conditions.

By not carrying out an investigation into the claim in the first instance, AXA has caused Mr S the need to complain to this service in order for his claim to be fairly considered. Which has unnecessarily delayed a resolution for him. This has caused some distress and inconvenience and I agree with our investigator that AXA should pay £100 compensation to apologise for this.

My final decision

For the reasons I've given I uphold Mr S' complaint and direct AXA Insurance UK Plc to:

- carry out an investigation into how entry was gained to Mr S' vehicle to establish if the exclusion would apply, and assess the claim against the remaining policy terms and conditions.
- Pay Mr S £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 April 2023.

Sophie Goodyear
Ombudsman