

The complaint

Mr and Mrs S complain that AXA Insurance UK Plc has turned down a personal possessions claim they made on a travel insurance policy.

As Mr S has brought the complaint, for ease of reading, I've referred mainly to him.

What happened

Mr and Mrs S hold travel insurance as a benefit of a packaged bank account.

In August 2021, Mr and Mrs S travelled on a cruise. They returned to the UK on 28 August 2021. Mr S says that personal possessions, including watches, a watch roll and cash were stolen from a bag he was carrying. The following day, Mr S made a claim for his lost/stolen items on his travel insurance policy.

AXA looked into Mr S' claim and turned it down. It said the policy required a policyholder to show they'd reported their loss to their carrier. In this case, Mr S had provided AXA with screenshots which he said showed he'd reported the loss to the cruise company soon after the event. However, he'd told AXA he hadn't had any response from the cruise company.

But AXA had contacted the cruise company directly. The cruise company had responded promptly and told AXA it hadn't received any loss report from Mr S. On that basis, AXA concluded that Mr S had misrepresented his claim to it.

Mr S was unhappy with AXA's decision and he asked us to look into his complaint.

Ultimately, our investigator recommended that Mr S' complaint should be upheld. She felt the screenshots Mr S had provided demonstrated that, on balance, he had reported the loss to the cruise provider in August 2021. So she felt the loss was likely to have happened in the way Mr S had said it had. She thought that AXA should accept and settle Mr S' claim.

AXA didn't provide a definitive response to our investigator's view, although it did have some concerns. It felt the screenshot might have been easy to fabricate. And it didn't think the screenshots proved, beyond reasonable doubt, that Mr S had reported the loss to the cruise company. So it questioned whether it should use utmost good faith and rely on Mr S' version of events.

I issued a provisional decision on 23 March 2023. In my provisional decision, I explained the reasons why I didn't think AXA had treated Mr S fairly. I said:

'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of Mr S' policy and the available evidence, to decide whether AXA handled Mr S' claim fairly.'

I've first considered the policy terms and conditions, as these form the basis of AXA's contract with Mr S. Sections nine and ten of the policy set out the relevant cover for a

policyholder's personal baggage. I note that the personal baggage section of the policy sets out a list of things which AXA specifically excludes from cover. One of these says:

'any loss or theft of or damage to Your Personal Baggage whilst in the custody of an airline or other carrier unless You report it immediately on discovery to the carrier and get a written report. In the case of an airline You will need a Property Irregularity Report (PIR)'

In my view, AXA has clearly set out that it requires a written report from a policyholder's carrier of loss or damage to a policyholder's items. In my experience, this isn't an unusual term in travel insurance policies – most, if not all, travel insurers will want to be satisfied that a policyholder has reported a loss to their carrier. And an insurer will want to be satisfied that the carrier hasn't been able to find the items or compensate a policyholder for their loss before it agrees to accept a claim.

AXA doesn't think Mr S has shown that he reported his loss to his carrier – the cruise company. I acknowledge that AXA did contact the cruise company itself and received a prompt response which stated that it had no record of Mr S making it aware of the loss. I've thought about this carefully.

On the other hand, I've taken into account screenshots which Mr S has provided to both us and to AXA. These are dated 29 August 2021 – the day Mr S reported the loss to AXA too. It appears, from the first screenshot, that Mr S had accessed the cruise company's 'contact us' function and had completed an online form. This form set out his booking details; contact details; and stated that his watches, watch roll and cash had been lost. He queried whether the items had been found or handed in. I can see from that screenshot that at the point it was taken; Mr S hadn't ticked to say that he'd read the cruise company's privacy policy, nor had he submitted the form.

The second screenshot is also dated 29 August 2021. The web address includes 'contact-us-success' within the URL. The screenshot goes on to say:

'Contact us success

THANK YOU!

We appreciate your comments.

If you have submitted a question or a request for assistance, we will get back to you shortly.

Best regards,

(Cruise company).'

AXA doesn't think these screenshots demonstrate that Mr S did contact the cruise company and it's questioned the authenticity of them. I'm mindful that the first screenshot was taken at a point prior to the enquiry being submitted and that it isn't proof that the enquiry was sent. But it seems to me that Mr S may well have taken a screenshot of his message prior to sending it to ensure that the information he'd inputted wasn't lost upon submission. In my view, this doesn't detract from its potential authenticity. I've seen nothing on either screenshot which suggests that it's most likely that they weren't 'screen-grabbed' from the cruise company's website.

And it's important I make it clear that I'm not required to make a decision based on an evidential test of beyond reasonable doubt. That's a test for the courts. I reach a decision based on the balance of probabilities – in other words, what I think is most likely to have happened, taking into account the available evidence and circumstances.

In this case, the confirmation email from the cruise company appears to have been sent following the submission of a 'contact us' form and is dated on the same date as the enquiry screenshot was taken. This is indicative that Mr S did at least make contact with the cruise

company the day after he returned from the cruise – and it seems likely that this was in relation to the items he says he’s lost. So on balance, I currently think the evidence does demonstrate that Mr S complied with the policy terms and reported the loss to his carrier. And it’s unfortunate that the cruise company didn’t appear to respond to Mr S’ enquiry or provide a written report.

Taking the above into account, I currently don’t find it’s fair or reasonable for AXA to turn down Mr S’ claim on the basis that it doesn’t think he reported the loss to the carrier. This means I don’t think it can fairly rely on the policy exclusion I’ve referred to above. With that said, I don’t think I could fairly direct AXA to settle Mr S’ claim at this point. In my view, the fair and reasonable outcome to this complaint would be for AXA to now reconsider Mr S’ claim, without reference to the exclusion, and in line with the remaining terms and conditions of the policy. It would be for Mr S to provide AXA with any reasonable supporting evidence it might require in order to carry out such an assessment.’

I asked both parties to provide me with any additional evidence or comments they wanted me to consider. Both Mr S and AXA accepted my provisional findings.

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.

Having done so, as both parties have accepted my provisional decision, I see no reason to change my provisional findings.

So my final decision is the same as my provisional decision and for the same reasons.

My final decision

For the reasons I’ve given above and in my provisional decision, my final decision is that I uphold Mr and Mrs S’ complaint.

I direct AXA Insurance UK Plc to reconsider Mr and Mrs S’ claim, in line with the remaining policy terms and conditions and any applicable limits and excesses.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs S and Mr S to accept or reject my decision before 16 May 2023.

Lisa Barham
Ombudsman