

The complaint

M, a limited company, complains about the way AXIS Specialty Europe SE dealt with a claim on its machinery damage insurance policy and about the amount offered in settlement of the claim.

Where I refer to AXIS this includes its agents and claims handlers acting on its behalf.

What happened

M took out insurance to cover the risk of damage to its machinery. In April 2021 a machine suddenly stopped working after a safety sensor was triggered. M said a router had cut through the material and cutting mats and into the machine. The router itself suffered a complete break down and would not restart. C made a claim on its machinery damage policy.

AXIS appointed a loss adjuster to inspect the machine and report on the claim. The loss adjuster visited in May 2021 and sent a report shortly after. The report noted that while the exact cause of the failure wasn't certain, it did appear an unexpected fault or malfunction had caused damage and none of the policy exclusions applied, so on the face of it the loss would be covered.

M arranged for repairs to be carried out. Following correspondence, AXIS made a settlement offer of around half the amount M had paid for the repairs. M didn't accept the offer and further correspondence followed.

AXIS made a further offer in September 2021. This was on the basis there had been a misrepresentation by M of the amount to be insured; AXIS said if it had known the correct value it would have charged a higher premium.

In November 2021 M's insurance broker, which was helping M with the claim, asked about arranging a second visit but the loss adjuster said he could see no benefit in that.

M's broker sent further information in December 2021 in support of the claim and complained on M's behalf about how the claim had been dealt with.

AXIS said it had dealt with the claim reasonably and any delays were due to the need to investigate it fully, together with problems obtaining expert reports on the cause of the damage. It said the offers it had made were fair. Its final offer was for the cost of the repairs but with a deduction of 50% for the cost of the parts to take account of the fact that putting brand new parts in the machine would put M in a better position that it had been in.

M then referred the complaint to this service. Our investigator thought the complaint should be upheld. He said the demands AXIS had made for information from M were unreasonable, AXIS had given different instructions at various times, and although it had offered to settle the claim the offers were based on an unfair interpretation of the policy terms. He asked AXIS to cover the claim in full together with interest from the date of its first settlement offer.

AXIS doesn't agree and has requested an ombudsman's decision. It says:

- the enquiries it made were reasonable;
- the parts being replaced would always need to be replaced after a certain time;
- replacing old parts with new parts amounts to betterment as it leaves M with a machine in a better position than it was before the incident, since the parts won't need to be replaced again as soon;
- it's reasonable to make a deduction for this; and
- as a reasonable offer was made and rejected, M shouldn't be entitled to interest on the settlement payment.

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.

Insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not reject claims unreasonably.

The policy provides cover for 'Sudden and Unforeseen Damage' as follows:

"The insurance provided by this Section is in respect of sudden and unforeseen Damage including Breakdown, Explosion and Collapse to Insured Property..."

"Breakdown" is defined as :

"the actual breaking, distortion or burning out of any part of the Insured Property whilst in use arising from mechanical or electrical defects in the Insured Property causing sudden stoppage... which necessitates repair or replacement before it can resume normal working."

So for the claim to be covered, M needs to show that mechanical or electrical defects in the machine caused a sudden stoppage.

The machine in question was over two years old. In these circumstances, settlement of a claim is to be made as follows:

"We will pay to You the value of the item at the time of the Damage, or the cost of repair of the Damage to a condition substantially the same as, but not better or more extensive than, the condition at the time of the Damage or at Our option, reinstate or replace the item."

In his report, the loss adjuster said the exact cause of failure is unknown but *"it does appear that that an unexpected fault and/or malfunction of the computer program has caused damage to the machine and it does appear that none of the policy exclusions apply."*

So the starting point should have been that, unless there was some clear evidence to say otherwise, there was an insured event.

The loss adjuster's report also says M was asked to get a report from the manufacturer of the machine. M says it wasn't asked for this at that time. I can't say whether the loss adjuster made it clear to M that it needed to provide a report at that stage, though it was mentioned later. But I don't think it was clear to M throughout the process what AXIS wanted.

AXIS made a number of offers. At one point, it indicated a reduced payment was appropriate because M had misrepresented the value being insured, which would be a breach of its duty to give a fair presentation of the risk under the Insurance Act 2015. AXIS relied on a policy

term that where, but for the misrepresentation, it would have entered into the policy but charged a higher premium, it may reduce any payment in the proportion that the premium actually paid bears to the premium it would have charged. However, AXIS has since confirmed it is not relying on that.

AXIS made another offer for a reduced payment on the basis that paying for brand new replacement parts would amount to 'betterment' – in other words, that M would have a machine that was in a better condition than before the breakdown. This is a general principle in insurance and is reflected in the policy term I've mentioned above about how claims will be settled.

However, I don't consider this to be a fair way to settle the claim. What M was entitled to was to have the machine repaired so it was in substantially the same condition as before. Unless it was able to obtain second-hand parts, the only way to do this was by using new parts. AXIS hasn't shown it was able to source second-hand parts. If a policyholder made a claim on their motor policy for repairs to their car following an accident, they wouldn't expect it to be repaired with used parts and the same principle applies here. I don't consider using new parts put M in a substantially better position. It was entitled to have repairs done to put it back in the position of having a working machine and that's what it did. AXIS hasn't shown the repairs increased the value of the machine. They simply returned it to good working order.

After having made an offer, AXIS then sought to step back from that and require more evidence. M provided an opinion from the manufacturer of parts for the machine which said the damage was sudden and would meet the definition in the policy terms. I appreciate AXIS had some concerns about the weight to be given to that evidence. But it does support M's position.

Having accepted that the claim was an insured event, if AXIS wanted to change its position then the onus was on AXIS to provide evidence contradicting what M had provided. AXIS asked for the motor to be delivered to an expert for inspection. While it was entitled to do that, this request could have been made much earlier on. I'm satisfied M has provided what evidence it could, and it did try to obtain information from the manufacturers.

Having accepted there was an insured event, AXIS made a number of offers which were not reasonable and didn't put M in the position it was entitled to be in. AXIS then sought to start further investigations which could have been carried out earlier. Looking at the circumstances of the claim as a whole my view is that the claim should have been settled in full at the date of the first offer AXIS made.

My final decision

I uphold the complaint and direct AXIS Specialty Europe SE to cover the claim in full and pay

- the amount shown on the invoices from M, less the policy excess; and
- simple interest on that sum at 8% per year from the date of the first offer AXIS made to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 10 August 2023.

Peter Whiteley
Ombudsman