

The complaint

Mr M has complained about his motor insurer AXA Insurance UK Plc as it has declined his claim made for theft of his vehicle. AXA said there were some discrepancies around the key Mr M provided, which meant it was unable to validate the claim. It then clarified that, in declining the claim, it was relying on the fraud condition in the policy.

What happened

In October 2021 Mr M's car was stolen from the drive outside his house. He made a claim to AXA and it began investigating the matter, asking Mr M for his car keys. Mr M had one key – he'd been provided with two at purchase of the car, but said he lost the main key around April 2021. He sent AXA the remaining spare key, which he said he had then been using as the main key for around six months. Mr M, noting that the police had suspected a relay theft (where thieves use a device to steal a car) and that there was CCTV footage of the suspects available, was surprised when AXA declined his claim.

AXA wrote to Mr M in December 2021. It said there were some discrepancies surrounding the key he had provided. Notably its expert report (by company "B") showed the key held no electronic data, so it seemed it couldn't be used to operate Mr M's car. It asked Mr M if he had any explanation that might account for this. Mr M replied and AXA then, in January 2022, said it wouldn't be progressing his claim any further as it was unable to validate it (due to the issues with the key). When Mr M queried this further AXA said it had declined his claim on account of the fraud condition on the policy. Mr M said he didn't understand in what way AXA had felt he had acted fraudulently. AXA implied it was because of the problems with the key.

Mr M obtained a report from an automotive engineer "D". D said the key/its data may have been compromised during or after the theft. AXA said that report didn't contain sufficient reasoning to show why the key held no data. AXA issued a final response in March 2022 stating it was satisfied by its decision and if Mr M was unhappy with it, he could complain to the Financial Ombudsman Service – which he duly did.

Our investigator did not uphold the complaint. Mr M remained unhappy. He particularly queried our Investigator's reliance on B's key report – he said this report wasn't compliant with rules pertaining to evidence presented in court. Mr M said he felt B's report can't, therefore, be relied upon at all. He noted that AXA has not provided a further report to challenge D's findings.

Mr M's complaint was passed to me for an Ombudsman's consideration. I felt it should be upheld, that AXA had unfairly accused Mr M of fraud and that it should further consider his claim. I issued a provisional decision to explain my views in this respect to both parties, along with my suggested redress, which included £500 compensation. My provisional findings, along with my comments about what I felt was needed to put things right, were:

"I know Mr M has concerns about B's report. But I don't think I can fairly and reasonably dismiss it in its entirety. Not least as whilst it may not be compliant with court procedure rules

(and I don't know if it is or not), it wouldn't have to be for consideration by this service. That is because we act as an informal alternative to the courts.

I know Mr M is also concerned about the serious nature of the allegation levelled against him by AXA. It's entirely reasonable for him to be concerned. As AXA is likely aware the Financial Ombudsman Service acknowledges the serious nature of fraud allegations. This type of allegation can have significant impacts on and wide-reaching consequences for a policyholder. As such we expect an insurer, seeking to rely on such an allegation, to support it by relying on strong evidence.

It's worth noting also that to show fraud has likely occurred an insurer doesn't just have to show that a policyholder has been untruthful about something. Although a policyholder should, of course, be open and honest with their insurer at all times. But 'fraud' requires that a policyholder has to have been untruthful about something with an intent to gain something they aren't otherwise entitled to receive under the policy.

I've considered the two expert reports available about the key. Both concur that it should contain vital data relevant to the car. But that it does not. B's report does not say why that data might be missing. AXA's claim notes show that B, in a call with AXA's claim handler, said there's no reason to suspect the key had a fault and that if the car was stolen by means of a device that connects with the car's key, the key data wouldn't be wiped in that process. B also said though that the key data could be compromised by being subjected to microwave radiation. Further that the theft could have been perpetrated by means of a pick-pocket swapping keys with Mr M. AXA has not shown that it gathered any other expert evidence – not even after having received D's report.

D's report is not conclusive about how or why the key contains no data. But it does explain that it might have happened during the theft, in transit or whilst being read. In respect of during the theft the report says all sorts of devices are used by thieves, and so a device causing damage to the key can't be ruled out. As far as I can see the engineer is suitably qualified to give expert opinion on this. And AXA hasn't obtained any expert advice in challenge of his views. B's report didn't contain an assessment in this respect, and the comments from B in its call with AXA are brief. I don't think AXA has presented sufficiently strong evidence to support a finding of fraud.

I also note though that AXA's file shows its claim handler spoke to a loss adjuster AXA had appointed to assist it with the claim. As noted in my background above, there is CCTV footage available from the time of the theft. The CCTV footage does not show the theft itself. But it does show the vicinity of Mr M's property, two men approaching Mr M's home and one running back past sometime later, putting something away in a bag as Mr M's car also drives past. The loss adjuster had seen this footage and told AXA that, in his opinion the car was likely not stolen by means of a key.

Going back to what I noted above about intent, that comment from AXA's loss adjuster is important. If AXA could satisfactorily show that Mr M was untruthful with it about the key – that he can't have been using it to drive the car before the theft – as I noted above it still has to show that was done with the intent for Mr M to gain something he otherwise wouldn't be entitled to under the policy.

AXA's claim file shows it had a chance to consider how a key might have been relevant to the theft. It didn't choose to present any detail in this respect to Mr M as a bar for it meeting his claim, not even on a without prejudice basis to its fraud allegation. And within its fraud accusation it didn't explain to Mr M why or how its implication that he had not been using the key presented to it, meant he must have lied about that – why it was likely that an honest

answer would have shown he had no entitlement under the policy to his theft claim being considered.

AXA's policy does exclude theft claims where a key is left unsecured and/or in the car. Most insurers choose to include an exclusion like this in the policy as they don't want to be responsible for thefts which have become possible because of the careless acts of a policyholder. And sometimes, when a policyholder has been careless like this, they might try and pass off a non-genuine key as the key they were using to drive the vehicle. I think, considering AXA's comments about the key, which held no data, which Mr M presented to it, that was AXA's concern here. But AXA's loss adjuster's expert opinion is that the CCTV footage shows it's most likely that a key was not used to steal Mr M's car. It follows then that it can't fairly be said that AXA has established Mr M lied (its view) with the intent to gain something he otherwise wasn't entitled to under the policy.

In my view then, AXA has not shown strong enough proof to support a finding of fraud. And nor has it established the intent element necessary to show that fraud has likely occurred. Therefore, I find that AXA acted unfairly and unreasonably when it accused Mr M of fraud and declined his claim.

I've thought then about what AXA must do to put things right.

Amending its own and any industry record is a given. I note it did not cancel Mr M's policy, so I don't need to make a direction in that respect. I also note that AXA came to its concerns about the key early in its claim assessment process. So I don't think it has fully considered the claim. I think it needs a chance to do that. Mr M has set out detail of some losses he's had because he hasn't yet had settlement of his claim. As AXA needs to still consider that claim – now that fraud in respect of the key has been taken out of the equation – I can't make any award in respect of those reported losses. Put simply I don't know if, but for the unfair and unreasonable allegation of fraud, Mr M's claim would otherwise likely have succeeded, thereby avoiding his reported losses. I will though award compensation for distress and inconvenience – I accept that the fraud allegation was upsetting for Mr M, particularly in his profession. Also that AXA's refusal to respond in any formal way to D's report was a source of frustration for Mr M."

AXA said it did not agree with my provisional decision. It said it did not record any fraud against Mr M. Rather, it said, it declined the claim due to a lack of reasonable explanation for the discrepancies, meaning it could not validate the claim. Which, it went on to explain, made it think a fraudulent claim had been presented. AXA said that it just isn't clear how the car was stolen and it's not for it to guess or assume what might have happened. As an example, AXA said it couldn't say Mr M had likely left his keys in the car, allowing the theft to occur, because it had no evidence of that.

AXA said it thought my decision was based on what might have happened, without evidence to support any conclusion – such as grasping on the idea of a possibility that a relay theft might have occurred. It said Mr M's credibility is in doubt because its investigations showed he can't have been using the key as stated because it could not start the car. It noted that the report Mr M had provided on the key only set out theories which its key company had refuted. With its key company also noting there was no wear on the key. AXA said it is worried that settling this claim will set a precedent for future fraudulent claims.

Mr M said he was pleased by my provisional decision but that he wanted me to include some specific wording about what AXA had done wrong. He asked that the compensation I had suggested is increased given AXA's intransigence in light of its loss adjuster's comments.

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 note AXA's reply was presented after the deadline for replies to my provisional decision expired. But as my final decision had not been issued when AXA's late reply arrived, I've considered what it's said.

I note that AXA takes a few contrasting positions in its reply. It says it did not record this as fraud, rather it declined the claim because it could not validate it. But it also says its investigations caused it to conclude the claim was fraudulent and it is worried about precedent for other fraudulent claims. AXA can't, in my view, have it both ways. AXA can't reasonably rely on fraud arguments to support a claim decline whilst stating the reason for the decline was not fraud.

In any event, when Mr M asked AXA during the claim why it was declining it, it referred him to the fraud condition on the policy. I reiterate what I said provisionally, if AXA wants to rely on a finding of fraud to decline a claim it has to support that in strong evidence – strong evidence of both a lie and which shows that that lie was made with the intent of gaining something not otherwise entitled to under the policy. I stand by what I said provisionally regarding why I think AXA, in either respect, has not done that here. But I also note from AXA's reply that it feels it has no evidence establishing how the car was stolen, for example, that Mr M left his key in it. So, again, AXA hasn't shown that it's most likely that the claim would have failed but for the "lie" (if there was one, which I've also said it hasn't shown) i.e. that the "lie" was made with the intent of gaining something not otherwise entitled to. I remain of the view that AXA acted unfairly and unreasonably when it declined the claim, accusing Mr M of fraud.

I've noted the specifics of what Mr M would like me to say in concluding this complaint. But it is for me to determine the outcome, decide upon the findings and explain my decision in those respects. I am satisfied that AXA failed Mr M here, that it levelled a serious accusation against him without strong evidence to support such. As such, and as I've said, I'm also satisfied that AXA treated Mr M unfairly and unreasonably.

I explained provisionally that I felt compensation should be paid by AXA. I set my compensation award having explained how AXA came to its fraud allegation even despite its loss adjuster's opinion. But it is the fraud allegation that has caused Mr M upset – he did not know the mechanism of why that was unfair, only that it felt unfair to him. And I have found, as I said provisionally, and in my paragraph above, that AXA treated Mr M unfairly and unreasonably. I remain of the view that £500 compensation is fairly and reasonably due to make up for that.

I've reviewed the complaint and my view on it has not changed. My provisional findings, along with those here, are now the findings of this my final decision.

Putting things right

I require AXA to:

- Remove the record of fraud from its own and any industry database.
- Consider Mr M's claim for theft of his car, in line with the remaining terms and conditions of the policy.
- Pay Mr M £500 compensation for distress and inconvenience.

My final decision

I uphold this complaint. I require AXA Insurance UK Plc to provide the redress set out above at “Putting things right”.

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

Fiona Robinson
Ombudsman